AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO


# FEDERAL REGISTER

Vol. 88 Thursday,
No. 163 August 24, 2023

Pages 57861–58064

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 88 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–09512—1800** |
| Assistance with public subscriptions | **202–512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public single copies | **1–866–512–1800 (Toll-Free)** |

**FEDERAL AGENCIES**

**Subscriptions:**

| | |
|---|---|
| Assistance with Federal agency subscriptions: | |
| Email | *FRSubscriptions@nara.gov* |
| Phone | **202–741–6000** |

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 88, No. 163

Thursday, August 24, 2023

---

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
1146.....57861
1147.....57861

**10 CFR**
1.....57873
2.....57873
26.....57873
32.....57873
40.....57873
50.....57873
51.....57873
52.....57873
72.....57873
73.....57873

**14 CFR**

**Proposed Rules:**
39 (3 documents) .....57902, 57904, 57907

**20 CFR**

**Proposed Rules:**
416.....57910

**26 CFR**

**Proposed Rules:**
1.....57916

**29 CFR**
1614.....57879

**30 CFR**
1206.....57881

**33 CFR**
165.....57882

**40 CFR**
52.....57882
180 (4 documents) .....57887, 57891, 57894, 57898

**42 CFR**
405.....57901
410.....57901
411.....57901
412.....57901
413.....57901
416.....57901
419.....57901
424.....57901
485.....57901
489.....57901

**50 CFR**

**Proposed Rules:**
622.....57916

# Rules and Regulations

Federal Register
Vol. 88, No. 163
Thursday, August 24, 2023

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 1146 and 1147

**[Doc. No. AMS–DA–21–0013]**

**RIN 0581–AE00**

## Dairy Donation Program

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes establishment of the Dairy Donation Program as required by the Consolidated Appropriations Act of 2021. Under the program, eligible dairy organizations that account to a Federal milk marketing order and incur a qualified expense related to certain dairy product donations may apply for and receive reimbursements for those donations. The program facilitates dairy product donations and minimizes food waste. The program works in tandem with the Milk Donation Reimbursement Program, and thus this rule also makes corresponding changes to those regulations.

**DATES:** This final rule is effective August 25, 2023.

**FOR FURTHER INFORMATION CONTACT:** Erin Taylor, Director, Order Formulation and Enforcement, AMS Dairy Program, USDA; 1400 Independence Avenue SW, Room 2524–S, Washington, DC 20250; telephone: (202) 720–7311; email: *DDP@usda.gov;* web address: *www.ams.usda.gov/ddp.*

**SUPPLEMENTARY INFORMATION:** Section 762 of the Consolidated Appropriations Act of 2021 (CAA) (Pub. L. 116–260) authorizes the Secretary of Agriculture (Secretary) to establish a program to reimburse dairy organizations for donated dairy products to non-profit organizations for distribution to recipient individuals and families. The Secretary delegated authority to establish and administer this program to the Agricultural Marketing Service (AMS). The program was implemented on September 1, 2021, through an interim final rule (86 FR 48887). This rule finalizes and makes minor changes to the provisions of the Dairy Donation Program (DDP) codified at 7 CFR part 1147. Program provisions are intended to encourage the donation of dairy products and to prevent and minimize food waste.

The DDP is an additional donation program that overlays existing United States Department of Agriculture (''USDA'' or ''Department'') dairy milk donation activities, such as the Milk Donation Reimbursement Program (MDRP). The MDRP was established as part of the 2018 Farm Bill to facilitate the donation of fluid milk products and avoid food waste. The program was funded with $9 million in fiscal year 2019, and $5 million per fiscal year thereafter. DDP and MDRP are separate from USDA purchase programs. These donation programs provide for reimbursement of certain costs for donations made between two private entities. Food purchases under USDA's The Emergency Food Assistance Program (TEFAP) and Section 32 programs are made through a bid process where USDA purchases the product and arranges for delivery to the distribution point.

DDP and MDRP are separate and distinct from USDA's Dairy Margin Coverage (which acts as a safety net program), indemnity and disaster assistance programs, risk management tools through the public-private partnership of the Federal Crop Insurance Program, or USDA purchases of commodities, which may include dairy products depending on the market conditions and demand from school lunch or nutrition programs.

This rule also makes corresponding minor changes to the MDRP provisions (codified at 7 CFR part 1146) previously amended by the interim final rule. In this rule, AMS is making minor changes to the DDP information collection forms, which also apply to MDRP, to gain administrative efficiencies and lessen the burden for entities participating in the two programs. The form changes include adding *distribution center* as an additional entity type and allowing for the Dairy Donation and Distribution Plan to include multiple partnerships per eligible dairy organization. These changes will be discussed in more detail later in the rule.

### Background

In 2020, the COVID–19 pandemic disrupted dairy supply chains and displaced significant volumes of milk normally used in food service channels. This led to milk being dumped or fed to animals across the United States. AMS estimates that the volume of milk dumped due to pandemic-related supply chain issues was almost triple what is typically observed during normal market conditions.[1] At the same time, amidst surging unemployment and economic hardship nationwide, an increasing number of individuals needed nutrient-dense foods such as dairy products. Throughout 2020 and 2021, milk and dairy products were included in food donations authorized under the Coronavirus Aid, Relief, and Economic Security Act (CARES) and through the Commodity Credit Corporation (CCC). In December 2020, Congress authorized an additional $400 million until expended to establish the DDP, designed to encourage the timely and efficient distribution of dairy products to families and individuals while reducing food waste.

While the DDP was intended to assist in balancing the supply chain during the pandemic recovery, it also provides the benefit of creating an incentive to donate dairy products during the normal spring flush of milk production. During normal marketing years (pre-pandemic), daily milk production in the spring averaged 6 to 7 percent more than in the lower production months of the fall.[2] USDA's Economic Research Service (ERS), using 2020 and 2021 food security data, estimates that 10.5 and 10.2 percent, respectively, of U.S. households were food insecure.[3] The United States remains in the midst of the recovery, and even while employment is returning to normal levels, there continues to be food insecurity. The persistent need for

[1] USDA Federal Milk Marketing Order Statistics, Other Use Volumes, March and April, 2015 through 2021.

[2] USDA, National Agricultural Statistics Service, Monthly Milk Production data, 2012 through 2020. *https://usda.library.cornell.edu/concern/publications/h989r321c?locale=en.*

[3] Trends in U.S. Food Security, 2020 and 2021; Update for October 18, 2022. *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/interactive-charts-and-highlights/#childtrends,* accessed August 23, 2021.

nutrient-dense foods such as dairy products can be met, in part, through donations encouraged by the DDP.

An interim final rule was published in the **Federal Register** on September 1, 2021 (86 FR 48887). Copies of the rule were made available through the internet by the Department and the Office of the Federal Register. The rule provided a 60-day comment period which ended November 1, 2021. Four comments were received, which are discussed in the applicable sections of this final rule. While all comments supported the program, some requested consideration of changes to specific program provisions.

The program was initially established through an interim final rule, with regulations set to expire on September 1, 2023, unless program provisions are finalized. Congress rescinded current program funding through the Financial Responsibility Act of 2023,[4] enacted on June 3, 2023. However, this final rule completes the DDP rulemaking by addressing relevant public comments, making minor administrative changes to reduce burden on the industry, and removing the program's sunset provision.

The following paragraphs give a general overview of how the DDP operates. Detailed explanations of program provisions can be found later in the *Program Provisions* section.

*Who is eligible to participate?*

Program eligibility continues to be open to eligible dairy organizations (EDOs), defined as dairy farmers (either individually or as part of a cooperative) or dairy processors that meet the following conditions: (1) account to a Federal Milk Marketing Order (FMMO) marketwide pool; and (2) incur a qualified expense. Although the definition of EDO includes individual dairy farmers, most farmers might not meet the other specified provisions to qualify as EDOs. For example, most farmers would not incur qualified expenses since they do not have the infrastructure to process raw milk into donated eligible dairy products. Those individual dairy farmers who do meet the required provisions would qualify as EDOs under statutes and this rule for both the DDP and MDRP.

The DDP and MDRP refer to the same statutory EDO definition; interpretation of that definition contained in the interim final rule was adopted by both programs. This final rule amends that interpretation, as explained below, to lessen the burden on participants and gain administrative efficiencies.

[4] Public Law 118–5.

(1) Account to an FMMO Marketwide Pool

The DDP authorizing statute [5] adopts the EDO definition contained in the statute establishing the MDRP.[6] When AMS implemented the MDRP, it interpreted the statutory language, ''account to an FMMO marketwide pool,'' to apply to entities regulated by, and therefore filing reports with, an FMMO. Participation in the MDRP was limited, partly due to the requirement to be regulated.

The COVID–19 pandemic and its impacts affected the entire United States. Supply chain disruptions described earlier were not limited to only those regulated by an FMMO. Consequently, Congress authorized the DDP through a broad relief package. In reviewing Congressional intent to encourage dairy product donation across the country, AMS determined the interpretation of ''account to'' as requiring regulation by an FMMO to be too narrow. Instead, a broader definition allowing for an EDO to ''account to'' an FMMO marketwide pool by filing a report with an FMMO office was deemed more appropriate. Consequently, the interim final rule revised the definition of ''eligible dairy organization'' for MDRP by removing the requirement that the EDO be regulated under an FMMO. It also adopted the same definition for the DDP.

In the interim final rule, USDA determined that the specific report that an EDO must submit to ''account to'' an FMMO marketwide pool was a monthly report that lists its fresh fluid products and/or bulk dairy commodity products purchased and how they were utilized to produce donated eligible dairy products. A comment from a Puerto Rican dairy processor explained that the industry, as well as consumers, suffered severe economic losses due to the pandemic, which were exacerbated in Puerto Rico due to its isolation from major US markets. The commenter suggested that the program provide more reporting flexibility in non-FMMO regions to make program impacts more equitable.

AMS agrees with this commenter. To receive a reimbursement for donations under the DDP, an EDO is required to submit a Reimbursement Claim Form. Requiring entities not regulated by an FMMO to submit a monthly report in addition to the Reimbursement Claim Form is overly burdensome for participants because both forms contain duplicative information.

The filing of the initial report serves to establish a relationship between the EDO and the FMMO office that will be auditing its DDP reimbursements. All other information needed to administer the program is submitted through the application and reimbursement process. There is no additional need to collect duplicative information through a monthly report filing with the FMMO office. Therefore, this final rule finds that accounting to an FMMO marketwide pool can be satisfied by an entity submitting a report once to any FMMO office. EDOs can contact their local FMMO office or access the DDP website to determine the applicable FMMO office where the report should be filed. The filing of this report for the purpose of participating in the DDP does not cause the EDO to become regulated by the FMMO. For the reasons so stated, USDA is amending the definition in this final rule as requested by the commenter.

(2) Incur a Qualified Expense

The statute further specifies that an EDO must incur a qualified expense. Since only Class I fluid products are donated through the MDRP and most Class I processors are regulated by an FMMO, incurring a qualified expense in the MDRP was originally interpreted as paying minimum classified values into an FMMO pool because that is the requirement for processors regulated by an FMMO. The interim final rule found that an EDO no longer needed to be regulated under an FMMO and added a definition of ''qualified expense'' to MDRP regulations to specify that a qualified expense is not tied to the FMMO regulatory requirement of paying minimum classified values. The DDP adopted the same definition in the interim final rule. This final rule continues to find those provisions appropriate.

EDOs incur a qualified expense by either purchasing a fluid milk product (raw milk, skim milk, cream, or concentrated fluid milk products) for processing into an eligible dairy product or purchasing bulk dairy commodity product for further processing into an eligible dairy product.

Dairy processors often buy fluid milk products for processing into dairy products. Dairy processors also purchase bulk dairy commodity products for further processing into retail packages. For example, a processor buys 40-pound cheese blocks to further process and package into 8-ounce blocks or bags of shredded cheese

[5] Sec. 762(a)(1) of the Consolidated Appropriations Act of 2021.

[6] Sec. 1431 of the Agricultural Act of 2014 (7 U.S.C. 9071(a)). Implementing regulations are codified at 7 CFR part 1147.

typically preferred by consumers and eligible distributors alike. The DDP is intended to facilitate these types of product donations. Therefore, in addition to processors who buy fluid milk products for processing, the DDP allows secondary processors who purchase and further process bulk commodities for donation to qualify as an EDO. To be considered an EDO, a secondary processor also needs to account to an FMMO marketwide pool as described earlier.

Once these two above conditions—accounting to an FMMO and incurring a qualified expense—are met, EDOs participate in the program by forming partnerships with eligible distributors and then submitting a Dairy Donation and Distribution Plan (Plan) to AMS for approval. If an EDO or eligible distributor is looking for a partner, they may contact the DDP Office (*ddp@usda.gov*) for assistance.

*What is reimbursed?*

Upon Plan approval, EDOs can submit a Reimbursement Claim Form (Claim Form) to receive reimbursement for donations. The DDP reimburses EDOs for some of the following: a. input costs: milk equivalent of either a fluid milk product or a bulk dairy commodity product used in the eligible dairy product; b. manufacturing costs; and c. transportation costs.

a. Input Costs—Fresh Fluid Milk or Bulk Dairy Commodity Product Milk Equivalent

In the FMMO system, milk is priced based on its end use. FMMO classifications are generally: Class I—traditionally the highest-class price—for beverage fluid milk products such as whole, skim, nonfat, and flavored milks; Class II for soft products such as yogurt, ice cream, and packaged fluid cream; Class III for spreadable and hard cheeses; and Class IV for butter and dried milk products. Announced monthly, FMMO-minimum classified prices reflect surveyed end-product wholesale market prices. Under an FMMO, regulated processors are required to pay at least minimum classified values based on how they use their milk.

This final rule continues to find that for processors purchasing and processing fresh fluid milk products (raw milk, skim milk, cream, or concentrated fluid products), the DDP will reimburse for the FMMO-minimum classified value applicable on the date of production for fresh fluid milk products used to make donated eligible dairy products. FMMO prices are a good approximation of what the processor paid for the fresh fluid milk products because they represent observed market values paid for product at the time of purchase.

The DDP does not reimburse for powders and other dry dairy products used as an ingredient in eligible dairy products (for example, powder used to fortify cheeses or ice cream.) Reimbursement is not extended to these ingredients because the DDP is designed to encourage the use of excess fresh fluid milk for donation, rather than being dumped. Dry milk powders in retail packaging—such as 10-ounce containers of nonfat dry milk, which are made directly from fresh fluid milk—continue to be considered eligible dairy products under this program, as surplus milk is likely manufactured into dry milk powder as opposed to being dumped.

Since FMMO minimum classified prices are stated on a hundredweight basis, EDOs should continue to report donations in the quantity and size of the donated product, which is converted to hundredweights with a yield factor (how much product can be made from 100 pounds of milk). Applicable announced minimum class skim and butterfat prices are used in determining the input cost of the donated dairy product. EDOs have the ability to provide an actual product yield factor, or the EDO can use a standard yield factor. Standard yield factors are posted on the DDP website.

Secondary processors buying bulk dairy commodity products for further processing and donation, as described earlier, will continue to be reimbursed at the classified use value applicable for the month the eligible dairy product was processed into the consumer-type package. The reimbursed value represents the milk-equivalent market price of the bulk dairy product at the time of conversion into an eligible dairy product.

b. Manufacturing Costs

Processors incur expenses beyond input costs to make dairy products. To encourage dairy product donations, this final rule continues to reimburse for some of the manufacturing costs incurred to convert fluid milk products into eligible dairy products. These manufacturing costs are reimbursed at the manufacturing (make) allowance levels contained in the FMMO uniform pricing formulas, which are generally accepted by the industry as representative costs of manufacturing dairy products from raw milk.

The interim final rule found it appropriate for the Class IV make allowance contained in the Class IV price formula to apply to Class I and II products. USDA lacked data on Class I and II manufacturing costs and asked for public comment on this issue in the interim final rule. A comment submitted from a dairy trade association included average ranges for Class I and II manufacturing costs for its members that produced such products. Submitted information concluded Class I costs ranged from $4.50–$10 per hundredweight (cwt) and Class II costs ranged from $5–$6 per cwt. While the cost ranges provided a general approximation of those experienced by its members, the comment lacked details on the underlying data needed to determine what the average cost ranges represented. For example, the submission did not include the specific products represented, the data collection timeframe, types of costs incurred, geographic disbursement of plants, size of plants, or how much of the Class I or II markets were represented. No other comments on Class I and II manufacturing costs were received.

While the data provided lacked detail, it is reasonable to conclude the Class IV manufacturing allowance, which equates to $2.16 per cwt, is significantly lower than the actual cost experienced by Class I plants. This final rule continues to find that while the DDP should not reimburse for all manufacturing costs, it should strive to reimburse at a level adequate for processors to choose to process and donate dairy products instead of dumping milk.

During the first year of administering the DDP, USDA experienced fluid milk processors choosing not to participate because the reimbursement rate was too low. As the statutory objective of the program is to encourage the donation of milk and dairy products to individuals and families, this final rule finds that the manufacturing cost reimbursement for Class I products should be increased.

As the input cost reimbursed through the DDP aligns with the product's classification, this final rule finds manufacturing costs should be similarly aligned. Under FMMOs, the base raw skim milk value of Class I products is the average of the Class III and Class IV skim milk price formulas, plus $0.74. Implicitly, this means Class I handlers regulated by the FMMO system receive a Class I manufacturing allowance that is the average of the Class III and Class IV manufacturing allowances. Therefore, this final rule finds the manufacturing cost reimbursement for Class I products donated through the DDP should likewise be the average of the Class III and Class IV manufacturing

allowances. Currently those manufacturing allowances equate to $3.17 per cwt and $2.16 per cwt, respectively, resulting in an average of $2.67 per cwt.

Recognizing Class II products are priced off the Class IV advanced skim milk pricing factor, Class II manufacturing costs reimbursed through the DPP will remain at the Class IV level, currently $2.16 per cwt.

This final rule makes no changes to the manufacturing cost reimbursement for Class III and IV products, which equates to $3.17 and $2.16 per hundredweight, respectively, for milk containing 3.5 percent butterfat. If the FMMO make allowances are updated in the future, DDP regulations referencing the FMMO regulations will be automatically adjusted.

The public comment submitted by the dairy trade association also suggested DDP manufacturing cost reimbursement be adjusted to more accurately reflect actual component tests of raw milk. The current FMMO make allowances, and therefore the DDP manufacturing reimbursement levels, reflect standard component levels—3.5% butterfat, 2.99% protein, and 5.69% other solids. According to the commenter, actual component tests of raw milk are higher (4% butterfat, for example). The comment states that incorporating these higher component levels would increase the manufacturing reimbursement under the DDP. This final rule finds the factors contained in the manufacturing allowances used in both the FMMO program and the DDP should be consistent. If FMMO make allowances are amended, this final rule allows for DDP manufacturing cost reimbursements to change automatically.

c. Transportation Costs

Transportation costs from the processor to a distribution outlet are often cost prohibitive. Absent reimbursement, processors may not be willing to incur additional transportation costs, and feeding organizations may lack the funding to cover these costs to facilitate the donation. The DDP aims to facilitate timely donations and reduce food waste. Therefore, this final rule continues to find the DDP should cover part of the transportation costs from the EDO to the eligible distributor. This may be especially beneficial to rural communities whose donation sites are often far from plants serving them and who may not receive assistance from other government feeding programs with distribution points closer to urban centers.

As the reimbursement value is paid to the EDO, the DDP only reimburses for transportation if the EDO incurred the expense. If donated eligible dairy products are picked up from the plant by the eligible distributor, no transportation reimbursement will be paid. Details of the transportation cost reimbursement rate are explained later in this rule.

*Total Reimbursement Value*

Section 762(d)(2)(A) of the CAA specifies that total reimbursement—the sum of input, manufacturing, and transportation costs—must be set neither too high to ''interfere with the commercial marketing of milk or dairy products'' nor too low to ''be sufficient to avoid food waste.'' The statute further requires total reimbursement to be between the highest and lowest of the classified milk values. To ensure costs can be sufficiently covered for most donations, the interim final rule capped the total reimbursement payment, on a per cwt basis, at the Class I value for the highest FMMO differential zone (Dade County, Florida). Capping at the highest FMMO zone allowed for Class I handlers to obtain some reimbursement for manufacturing and transportation costs.

Section 762(d)(2)(B)(iv) of the CAA further allows the Secretary to maintain traditional price relationships—Class I being the highest, followed in sequence by II, III and IV—in setting the reimbursement rate. In 2020, dairy markets experienced pronounced class price inversions, where the Class III price was significantly higher than the Class I price in many areas of the country. However, the Class III price has been above the Class I price in Dade County, Florida, only three times since the current pricing system was adopted on January 1, 2000.[7] No extreme price inversions have occurred since the interim final rule was published, and such extreme inversions are not anticipated in the foreseeable future. While the DDP does not directly determine classified prices and price relationships, the interim final rule found that program rules should not exacerbate price inversions if they occur. In times of price inversion, where the Class I price is not the highest-class price, the interim final rule continued to cap total reimbursements at the Class I price for Dade County, Florida. This final rule continues to find the reimbursement cap appropriate.

*When do plans and reimbursement claims need to be submitted?*

Entities must submit Plan and Eligible Distributor Certification Forms (Certification Forms) to AMS for approval before they can submit Claim Forms for reimbursement. Reimbursement Claim Forms, along with supporting documentation, can be filed any time after the Plan is approved and the donation is made. AMS uses the supporting documentation to verify program requirements were met. Plans only need to be submitted once for approval. The DDP does not require annual Plan renewal.

*How does AMS handle both the DDP and MDRP?*

Although program funds for the DDP and MDRP are statutorily prohibited from being consolidated, the two programs operate as one from a stakeholder standpoint. EDOs making Class I fluid milk product donations which are covered by both programs are reimbursed through MDRP funds at the difference between the Class I and lowest classified price and receive a supplemental reimbursement of the lowest classified price plus the manufacturing and transportation cost reimbursement through DDP funds. Total combined reimbursement is capped at the Class I price in Dade County, Florida.

EDOs already enrolled in MDRP were automatically enrolled in the DDP when the interim final rule became effective. Subsequently, they received supplementary payments for fluid milk products donated under their currently approved MDRP Plans.

*Is there a retroactive period for reimbursement?*

Section 762(h) of the CAA requires supplementary payments be made to EDOs participating in the MDRP for donations made on or after January 1, 2020. Since the statute allows for retroactive reimbursement to those participating in the DDP, a retroactive date of January 1, 2020, was adopted in the interim final rule to apply to the DDP to streamline administration of the two programs. To ensure adequate availability of funds for donations made before enactment of the CAA, total program expenditures for eligible dairy product donations made from January 1, 2020, to December 27, 2020, were limited to no more than $50 million under the interim final rule.[8] A deadline

[7] USDA, Federal Milk Marketing Order Statistics, Final Class and Component Prices by Order. *https://www.ams.usda.gov/resources/marketing-order-statistics/final-class-and-component-prices-order.*

[8] As indicated in the Economic Analysis contained in the interim final rule, USDA expected the DDP to expend $68 million annually. In determining funds available for this retroactive

for requesting retroactive reimbursement was posted on the AMS web page for the DDP, and roughly $712,000 in retroactive claims were submitted.

**Program Provisions**

The following details the DDP provisions and amendments to the MDRP, where applicable.

*Definitions*

The statute includes definitions for terms used. Section 1147.1 provides definitions for terms as they are used in the new program. Key terms are ''eligible dairy organization,'' ''eligible dairy product,'' ''eligible distributor,'' ''eligible partnership,'' and ''qualified expense.'' This final rule makes no changes to these definitions.

*Eligible dairy organization (EDO).* As explained in the *Background* section, section 762(a)(1) of the CAA adopts the same EDO definition contained in the statute establishing the MDRP. *See* Sec. 1431(a) and (b) of the Agricultural Act of 2014 (7 U.S.C. 9071(a)). The regulatory definition matches the statutory definition, which specifies that a dairy organization eligible to participate in the program is a dairy farmer, either individually or as part of a cooperative, or a dairy processor that: (1) accounts to an FMMO marketwide pool; and (2) incurs qualified expenses. *See id.*

*Eligible dairy product.* Section 762(a)(2) of the CAA specifies that only dairy products primarily made from milk, including fluid milk, produced and processed in the United States are eligible for donation and reimbursement under the DDP. Additional standards defining further requirements for eligible dairy products are described in the commodity specification provisions. Accordingly, § 1147.1 defines ''eligible dairy product'' as a dairy product meeting the commodity specifications referenced in § 1147.3.

*Eligible distributor.* Section 762(a)(3) of the CAA defines ''eligible distributor'' as ''a public or private nonprofit organization that distributes donated eligible dairy products to recipient individuals and families.'' Section 1147.1 likewise defines ''eligible distributor'' as a public or private non-profit feeding organization distributing, or coordinating the distribution of, donated eligible dairy products to recipient individuals and families. Eligible distributors such as food banks, shelters, kitchens, and other food distribution organizations are eligible so long as they are nonprofit entities. Under this program, participating eligible distributors fill out an Eligible Distributor Certification Form to verify their non-profit status and affirm they have appropriate facilities and processes for distributing donated dairy products to recipient individuals and families.

*Eligible partnership.* Section 762(c) of the CAA requires an EDO and eligible distributor form a partnership to participate in the DDP. Requiring parties to apply as a partnership ensures all program provisions are met and an agreed-upon structure is in place when eligible dairy products are available for donation and distribution. Section 762(a)(4) of the CAA defines ''eligible partnership'' as ''a partnership between an eligible dairy organization and an eligible distributor,'' and this rule continues to find the same definition appropriate.

AMS recognizes some EDOs may have processing plants in multiple locations reporting to different FMMOs. Similarly, eligible distributors may have multiple distribution sites; for example, several food pantries are operated by one umbrella organization. Thus, under § 1147.102(a), the eligible partnership can submit one Plan to cover multiple plants and/or distribution locations as long as only one EDO is represented.

*Qualified expense.* The statute does not define ''qualified expense,'' but does specify one needs to be incurred to be eligible for program participation. Section 1147.1 defines ''qualified expense'' as the cost incurred to purchase fresh fluid milk for processing into eligible dairy products or the cost incurred to purchase bulk dairy commodity products for further processing into eligible dairy products. A qualified expense is different than the reimbursement rate, which is described later in this final rule. Because defining ''qualified expense'' is fundamental to determining program eligibility and the MDRP and DDP reference the same ''eligible dairy organization'' statutory definition, the ''qualified expense'' definition was added to the MDRP regulation in the interim final rule and remains unchanged by this final rule.

Additional terms necessary for administration of the program are defined in § 1147.1. ''Program'' is defined as the Dairy Donation Program, and ''Secretary'' is defined as the Secretary of the United States Department of Agriculture or a representative authorized to act in the Secretary's stead.

*Commodity Specifications*

The final rule amends the DDP's commodity specification provisions to expand applicability to eligible distributors, as explained below.

The DDP is intended to reimburse eligible dairy organizations for timely donations of eligible dairy products and minimize food waste. It is therefore reasonable to ensure eligible dairy products donated under the DDP meet minimum food safety and quality standards and are in package sizes desired by eligible distributors, consistent with the intent of the program to minimize food waste that might otherwise result. The final rule makes no changes to § 1147.3, which defines the program's commodity specifications.

The final rule continues to require that EDOs comply with all applicable Federal, State, and local laws, executive orders, and rules and regulations related to its performance under this program.

To qualify under the program, eligible dairy products must:

1. Be made primarily from cow's (bovine) milk produced in the United States;

2. Be packaged in consumer-sized packaging; and

3. Meet the applicable provisions for dairy products in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et. seq.*), as amended. Grade 'A' dairy products must meet the applicable provisions of the current edition of the Pasteurized Milk Ordinance [9]; and

4. Have a sell-by, best-by, or use-by date no sooner than 12 days from the date the eligible dairy product is delivered to the eligible distributor.

Currently, bovine cow's milk is the only type of milk in surplus being dumped at the farm. Since the program is designed to prevent surplus milk from being dumped at the farm, it is the Secretary's discretion to limit the DDP to cow's (bovine) milk.

Program provisions also specify donated dairy products must be in consumer-sized packaging. This provision should be interpreted by the eligible partnership as to whatever consumer-sized package is agreeable to both entities. Examples of consumer-sized packaging include, but are not limited to, gallons of milk, 8-ounce blocks of cheese, single serve containers of yogurt, 1-pound packages of butter, or large bags of milk if the eligible distributor has the ability to dispense (*i.e.,* a soup kitchen). When submitting

period, USDA limited expenditures to approximately 80 percent ($50 million), consistent with other USDA COVID–19 recovery programs (7 CFR part 9—Coronavirus Food Assistance Program).

[9] *https://www.fda.gov/food/guidance-documents-regulatory-information-topic-food-and-dietary-supplements/milk-guidance-documents-regulatory-information.*

Plans for approval, the EDO is required to list what types of products it will be donating. The submitted information is checked against the distribution process explained by the eligible distributor to ensure it has the ability to distribute the types of products to be donated.

*Program Eligibility and Participation*

As explained below, this final rule makes no changes to the program eligibility and participation provisions, except for a modification of the Plan submission requirements designed to lessen the burden on participants.

Section 1147.100 requires an eligible dairy organization must be a member of a partnership whose Plan has been approved by AMS to be eligible for reimbursements under the DDP.

Section 1147.102 outlines requirements for Plan submission in order to be considered for the program. The interim final rule required the EDO to submit a Plan for each partnership. Upon administering the program, AMS found requiring an EDO to submit a separate Plan for each partnership overly burdensome to participants, as the EDO was submitting the same information about its operations on multiple Plans. Allowing Plans to cover multiple partnerships with the same EDO eliminates reporting redundancies, increases efficiencies, and reduces participant burden. Plans must continue to include a signed affirmation regarding the type of product to be donated and the EDO's ability to process and transport eligible dairy products consistent with the requirements in the commodity specifications under § 1147.3.

Along with the Plan submission, eligible distributors are required to submit a signed Certification Form, which includes a description of the eligible distributor's distribution process, contact information, and a tax identification number to ensure compliance with program provisions. AMS has found that details of a particular partnership–the EDO and the eligible distributor—are sufficiently covered in the information provided in the Eligible Distributor Certification Form. Accordingly, this final rule amends the regulations to allow the EDO to submit one Plan to cover all its partnerships and a separate Certification Form for each eligible distributor to AMS.

As specified in § 1147.208, AMS only collects information deemed necessary to determine whether an eligible partnership's Plan should be approved. All proprietary business information submitted is used only for the purposes of the program and kept confidential by AMS.

Section 1147.104 specifies the process AMS will continue to use to review and approve program applications. Within 15 business days of application submission, AMS reviews the Plan and Certification Form, determines whether to approve or disapprove, and notifies the eligible partnership of the determination. Under § 1147.104(a)(1), AMS reviews the information submitted by the partnership, including the signed affirmation that the partnership can meet the requirements related to proper processing, transport, storage, and distribution of eligible dairy products. Under § 1147.104(a)(2), AMS considers the extent to which the Plan would advance the statutory purposes of the DDP, namely, whether the Plan would facilitate the timely donation of eligible dairy products and prevent and minimize food waste. *See* Sec. 762(b) of the CAA.

Finally, section 762(c)(2)(B)(i) of the CAA specifies that priority review is given to submitted Plans where an emergency or disaster was a substantial factor, including a declared or renewed public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247(d)) or a disaster designated by the Secretary. In reviewing a Plan, AMS determines if an emergency or disaster was a substantial factor in the Plan's submission. In this case, ''substantial factor'' means that a supply and/or demand disruption caused by the emergency or disaster event is a main reason for the partnership submitting the Plan. For example, the COVID–19 public health emergency—which caused a significant decrease in school and restaurant dairy demand, leading to large volumes of displaced milk and many people in need of food assistance—could be considered a justification for priority review. If an emergency or disaster is deemed a substantial factor, AMS prioritizes review of that Plan to facilitate donations and meet an immediate need. Section 1147.104(a)(3) incorporates those factors for Plan prioritization.

Once approved, Plans do not need to be resubmitted in subsequent fiscal years, unless changes are made. Eligible partnerships that received reimbursement from the MDRP were automatically enrolled in the DDP when the program was implemented and became eligible to receive the supplemental reimbursement as defined in § 1147.109.

*Reimbursement and Reimbursement Price*

This final rule makes minor administrative changes to the Reimbursement Claim Form and subsequently the MDRP and DDP regulations, to ensure proper reimbursement rates. This rule continues to find the reimbursement price—the sum of input, transportation, and manufacturing costs—an appropriate reimbursement rate to meet program objectives.

Section 762(d) of the statute requires the Secretary to reimburse EDOs with approved Plans. Section 1147.106(a) provides the process and describes the necessary information and documentation AMS requires to verify the EDO's donation and calculate its reimbursement. To receive reimbursement, the EDO must complete and submit a Reimbursement Claim Form (Claim Form) that includes: the type, volume, and manufactured date of the eligible dairy products donated; the entity type (processor, co-pack facility, distribution center, or eligible distributor); the physical address(es) of the eligible dairy organization's processing plant(s), co-pack facility(ies), and distribution center(s), and the eligible distributor's distribution site(s); the universal product code(s) (UPCs) for donated product(s); the sell-by, best-by, or use-by date(s) for donated product(s); and the dates the donated dairy products were processed and shipped to the eligible distributor.

In administering the DDP since September 1, 2021, AMS learned some EDOs transport donated product to EDO-owned distribution centers before delivering to an eligible distributor as part of their normal business operations. As the DDP was designed to only reimburse for transportation from the last point of ownership by the EDO, obtaining information on a distribution center location, where applicable, is necessary to determine the accurate transportation reimbursement. Accordingly, this final rule adds ''distribution center'' as an additional entity type to the Claim Form in order to improve data accuracy and ensure proper reimbursement calculations.

There is no requirement dictating the frequency of Claim Form submissions; therefore, any time after its Plan is approved, the EDO can submit Claim Forms for donations made. The EDO also must provide adequate documentation, which should be available through its normal business records, to verify the eligible distributor received the donated eligible dairy products. Such documentation could

include, but is not limited to, processing and shipping records, bills of lading, storage records, or receiving records from the eligible distributor. As specified in § 1147.208, AMS only collects the information and documentation needed to verify the EDO's reimbursement claim.

Section 762(d)(4) of the CAA allows the Secretary to make retroactive reimbursements to EDOs that donate eligible dairy products before their Plans are approved. As provided for in statute, eligible dairy products donated through the MDRP are eligible for supplemental reimbursement through DDP for donations made on or after January 1, 2020. To gain administrative efficiencies and streamline the two programs, donations of eligible dairy products through DDP beginning on the same date were also eligible for reimbursement by the interim final rule. Accordingly, § 1147.106(a)(3) provides for donations of eligible dairy products beginning on January 1, 2020, to be eligible for reimbursement. As described earlier, total reimbursement for donations made from January 1, 2020, through December 27, 2020, was capped at $50 million by the interim final rule. This cap was implemented to ensure equitable distribution of funds for that time period in case a large number of claims were submitted. Participating entities had 6 months to submit claims for this time period; only 20 claims were received and approximately $712,000 was reimbursed.

As authorized by section 762(d)(3)(B) of the CAA, AMS may verify the accuracy of supporting documentation with spot checks and audits under § 1147.206.

Under section 762(d)(2)(A) of the CAA, the Secretary shall set a reimbursement price that reflects the cost of the milk required to make the donated eligible dairy product, is between the FMMO Class I and Class IV minimum prices for the month of production, is sufficient to avoid food waste, and does not interfere with the commercial marketing of milk or dairy products. Section 1147.108 provides for reimbursement of three separate cost factors: (1) input cost—fluid milk product or bulk dairy commodity product milk-equivalent cost; (2) manufacturing cost of converting fluid milk into a product; and (3) transportation cost from the EDO to the eligible distributor. Section 1147.108(a) provides that reimbursements are the sum of the three cost factors.

For the first of these factors, input cost, processors purchasing and processing fresh fluid milk products (raw milk, skim milk, cream, or concentrated fluid products), are reimbursed at the applicable FMMO minimum classified skim and butterfat values. Processors purchasing bulk dairy commodity products for further processing into eligible dairy products are reimbursed at the applicable FMMO minimum classified skim and butterfat values for the fluid milk equivalent contained in the bulk product. This value is determined by the milk's end use (Class I for fluid milk products, Class II for soft products such as yogurt, Class III for cheese products, and Class IV for butter and powder products) pursuant to 7 CFR 1000.40 and the applicable classified price in effect for the month of production pursuant to 7 CFR 1000.50.

The manufacturing cost for processing fluid milk is represented by the applicable FMMO make allowances contained in 7 CFR 1000.50. The DDP uses the FMMO make allowances in the Class III and IV price formulas to reflect manufacturing costs for Class III and IV products, as they are based on surveyed cost data of wholesale Class III and IV products. The Department lacked data on manufacturing costs for Class I and II products. As such, the interim final rule adopted the lowest make allowance, Class IV, as the representative manufacturing costs and requested public comment on manufacturing costs for these classes of products. One comment was received. As explained in the *Background* section, the comment did not include full context on what the cost ranges represented. However, AMS finds it reasonable to conclude from the data submitted that Class I manufacturing costs are higher than the Class IV make allowance currently used. Upon further review, this final rule amends the Class I make allowance to be the average of the Class III and IV make allowances, as the Class I pricing formula is a function of the average of Class III and IV prices. Also discussed earlier, the Class IV make allowance will still apply for Class II products, as the Class II price is a function of the Class IV price. This final rule does not retroactively apply the amended make allowance for Class I products to reimbursements made prior to the implementation of this final rule. The new Class I make allowance will only apply to reimbursement of Class I products submitted after the implementation of this final rule.

As explained in the *Background* section, the program does not reimburse additional processing costs for bulk products purchased and further processed. Processors purchasing bulk dairy commodity products for further processing receive the same manufacturing cost reimbursement as described above. Processors buy bulk product on a per-pound basis, and it is reasonable to conclude the price paid represented both the fluid milk value (which they are being reimbursed for as described earlier) and the cost to convert the fluid milk into the bulk commodity. Therefore, eligible dairy products made from bulk dairy commodity products are only eligible to receive the manufacturing cost reimbursement applicable to fluid milk.

The transportation cost reimbursement is based on the U.S. monthly average diesel fuel price [10] for the month the donation was made, a fuel economy factor of 6.1 miles per gallon,[11] and the shortest hard-surface distance from the last point of EDO-ownership of the product to the eligible distributor's physical distribution location. The final rule clarifies that transportation cost reimbursement is from the last point of EDO-ownership, which does not necessarily mean from the plant where the product was produced. As a normal course of business, some processors transport product to an EDO-owned distribution center before delivering to the eligible distributor. To ensure efficient movements of product and proper application of transportation reimbursement, it is appropriate the EDO only receive reimbursement from the last point of ownership. Transportation reimbursement is only be paid if the EDO incurred the transportation cost, which is verified on audit.

Section 762(h) of the CAA requires the Secretary to make supplemental reimbursements to EDOs receiving reimbursements under the MDRP from January 1, 2020, to the date when DDP program funds are no longer available. AMS recognizes an EDO under MDRP is also eligible under DDP. Further, eligible dairy products under MDRP also qualify as eligible dairy products under DDP (notably, fluid milk products). Since DDP reimburses at a higher rate than MDRP, a supplemental reimbursement is needed to properly use funds for and fulfill the purposes of both programs. Section 1147.109 provides the process AMS follows to make a supplemental reimbursement to EDOs receiving reimbursement under

[10] U.S. Energy Information Administration (EIA), 2022; Gasoline and Diesel Fuel Update for December 5, 2022. *https://www.eia.gov/petroleum/gasdiesel/*, accessed December 9, 2022.

[11] United States Department of Transportation, 2021; Combination Truck Fuel Consumption Data. *https://www.bts.gov/browse-statistical-products-and-data/freight-facts-and-figures/combination-truck-fuel-consumption*, accessed August 23, 2021.

MDRP. EDOs with already approved Plans under MDRP were automatically enrolled in DDP when the program was implemented and received supplemental reimbursements equal to the difference they received under MDRP and the reimbursement they would be eligible to receive for the same products under DDP, calculated in § 1147.108. New applicants to the DDP that donate fluid milk products will be automatically enrolled in MDRP. Upon approval, AMS makes reimbursements under the MDRP provisions and then supplemental reimbursements under the DDP provisions.

*Administrative Provisions*

This final rule continues the administrative provisions without change.

Section 762(g) of the CAA requires AMS to publish donation activity for the program. Accordingly, § 1147.200 provides that AMS periodically reports on its publicly accessible website the aggregated donation activity under this program. Such information includes types and volume of product donated, as well as remaining available funds. Since April 2022, AMS has posted reports quarterly on its website, along with the Plan and Claim Form templates to be submitted for program participation.

Section 762(e) of the CAA prohibits the sale of eligible dairy products donated under the DDP back into commercial markets and specifies that eligible distributors who violate that prohibition will not be eligible for future participation in the DDP. Section 1147.204 implements the statutory prohibition and penalty for violation. In addition, the program prohibits reimbursement for donated eligible dairy products made in conjunction with marketing or promotional events.

Section 762(f) of the CAA directs the Secretary to conduct appropriate reviews or audits to ensure the integrity of the DDP. Under section 762(d)(3)(B) of the CAA, the Secretary is further authorized to verify the accuracy of submitted documentation through spot checks and audits. Section 1147.206 provides that AMS verifies the proper delivery of and payment for donated eligible dairy products. Specifically, AMS ensures the donated eligible dairy products were delivered to the eligible distributor and the accuracy of the reimbursed value paid to the EDO. The section further provides for the review, audit, and spot checks of information submitted.

As mentioned in the above discussions, § 1147.208 requires AMS to maintain confidentiality regarding information collected to administer the program and to use the information only for program purposes.

A books and records provision is included in § 1147.209 to ensure the EDO maintains necessary records to be made available to AMS upon request in conjunction with an audit.

Section 1147.210 specifies that dairy products sold or donated under any other USDA commodity purchase or donation program, other than the MDRP, are not eligible for reimbursement under the DDP. From time to time, USDA may purchase dairy products for use in nutrition assistance programs or other uses, but vendors are compensated for those purchases through funding under those program provisions. One of the main purposes of the DDP is to reduce food waste by encouraging the donation of additional dairy products through eligible distributors. Thus, EDOs who received compensation for dairy product purchases under other USDA programs may not receive reimbursements for the same dairy products under the DDP.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. Chapter 35), AMS has requested approval of updated information collection and recordkeeping requirements for the DDP. AMS received no public comments on the Office of Management and Budget (OMB)-approved information collection portion of the interim final rule. AMS is now making three minor changes (described below) to lessen the burden on participants and increase administrative efficiencies.

*Title:* Dairy Donation Program Final Rule.

*OMB Number:* 0581–0327.

*Expiration Date of Approval:* Pending.

*Type of Request:* Approval of Updated Information Collection.

*Abstract:* The Consolidated Appropriations Act of 2021 (CAA) mandated establishment of a Dairy Donation Program (DDP) to reimburse eligible dairy organizations (EDO) for milk used to make eligible dairy products donated to non-profit groups for distribution to recipient individuals and families. Under the program, EDOs account to a Federal milk marketing order (FMMO) by filing a report with an FMMO. Entities not already filing an FMMO report will be required to submit a Report of Receipts and Utilization. The information collection burden is being changed to allow the report to be submitted once rather than every month donated products are manufactured as was originally implemented.

All EDOs must submit a Dairy Donation and Distribution Plan (Plan outlining their partnership(s) and products to be donated and, for each eligible distributor partner, an Eligible Distributor Certification Form (Certification Form) describing the process of transporting, storing, and distributing eligible product to an eligible distributor. Once approved, the EDO can file a Reimbursement Claim Form (Claim Form) to receive reimbursement for the donated eligible dairy products. Since the final rule allows for EDOs to include multiple partnerships on one Plan, whereas the interim final rule required EDOs to submit one Plan per partnership, the number of responses and reporting burden for the Plan will decrease. Further, due to this same change, the number of responses and reporting burden for the Claim Form will decrease because the EDO will no longer need to submit separate Claim Forms for each partnership.

Dairy Donation and Distribution Plan

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Eligible dairy organizations.

*Estimated Number of Respondents:* 150.

*Estimated Number of Responses:* 150.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 150 hours.

Eligible Distributor Certification Form

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 15 minutes per response.

*Respondents:* Eligible distributors.

*Estimated Number of Respondents:* 300.

*Estimated Number of Responses:* 300.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 75 hours.

Reimbursement Claim Form

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2 hours per response.

*Respondents:* Eligible dairy organizations.

*Estimated Number of Respondents:* 150.

*Estimated Number of Responses:* 600.

*Estimated Number of Responses per Respondent:* 4.

*Estimated Total Annual Burden on Respondents:* 1,200 hours.

Report of Receipts and Utilization

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Eligible dairy organizations.

*Estimated Number of Respondents:* 15.

*Estimated Number of Responses:* 15.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 15 hours.

*Comments:* No comments were received on the information collection in the interim final rule.

In the interim final rule, AMS estimated 150 respondents would form 2 partnerships on average for a total of 300 partnerships. In the first fiscal year of program operation, there were approximately 120 respondents that formed 280 partnerships.

Each EDO is required to submit a Plan, which can cover multiple partnerships with that EDO, and a Certification Form for each eligible distributor partner. These forms only need to be submitted once; there will not be an annual renewal requirement. AMS estimates 1 hour to complete a Plan. Accompanying the Plan, the EDO will be required to complete a Certification Form, which AMS anticipates will take 15 minutes.

AMS estimates 10 percent of the 150 EDO participants do not already account to an FMMO by filing a report. Therefore, approximately 15 respondents will need to account to an FMMO by filing a Report of Receipts and Utilization Form. All other EDOs have accounted to an FMMO through their normal report filing based on their existing association with an FMMO. AMS estimates 1 hour to complete the form. Filing of this form will not cause an EDO to become regulated by an FMMO.

Claim Forms can be submitted any time after Plan approval and will be processed on at least a quarterly basis. AMS estimated that to capture efficiencies respondents will submit Claim Forms no more than once per quarter and it will take 2 hours to complete the form per quarter.

Assuming the reporting burden will be completed by an administrative assistant employee, at an hourly salary rate of $21.70 [12], AMS estimates the following annual reporting costs per participant, assuming two eligible distributor partners per EDO: for the first year of participation, the annualized cost is $206.15 (one Plan, two Certification Forms, and four Claim Forms); for the subsequent years of participation, the annualized cost is $173.60 (four Claim Forms). Entities needing to account to an FMMO by filing a Report of Receipts and Utilization Form will experience an additional annual burden of $21.70 in the first year only (one response). EDOs also are required to maintain books and records for 3 years to be made available to AMS upon request in conjunction with an audit to verify the donations the EDO received reimbursement for were made. These records are part of normal business records and do not require additional records to be created. Such records include production records to verify yield computations and product code dates for donated manufactured products, or delivery documentation to verify the EDO incurred a transportation expense.

[12] Mean hourly wage for a bookkeeping, accounting, and auditing clerk in 2021, according to the Bureau of Labor Statistics: *https://www.bls.gov/oes/current/oes433031.htm.*

**E-Government Act**

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. Forms can be found at *http://www.ams.usda.gov/ddp* and filed through email at *ddp@usda.gov.*

**Statutory and Regulatory Authority**

Section 762 of the Consolidated Appropriations Act of 2021 mandates that AMS establish and administer a Dairy Donation Program (7 CFR part 1147). The program is intended to facilitate the timely donation of eligible dairy products and prevent and minimize food waste.

**Executive Orders 12866 and 13563**

USDA is issuing this rule in conformance with Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. AMS has determined this action, mandated by Congress, meets the requirements set forth in the Consolidated Appropriations Act of 2021 to facilitate donation of eligible dairy products and prevent and minimize food waste.

The interim final rule sought public comment on the economic impacts of this action on the industry, including availability of information or data that may demonstrate if and how DDP reimbursements affect the market. As discussed earlier, AMS received four comments, of which three were germane to this rulemaking. One comment was received on manufacturing costs for Class I and II products. Another comment requested additional flexibility concerning reporting requirements. One additional comment expressed support of the positive economic impact the program has on the dairy industry and consumers alike.

Regarding regional economic differences, AMS considered alternative methods for allocating available funds under the program, including whether to allocate reimbursements equally across all the geographic areas of the United States or to target specific regions in need of milk donations. Ultimately, AMS determined that because the program's primary purpose is to reduce waste associated with the disposition of surplus milk, the industry would be best served by allowing those with the capacity to process surplus milk and who are in a position to make donations to apply for the program without consideration of geographic location.

AMS continues to find that this rule does not have any quantified cost or benefits, rather the rule results in transfers consistent with the following table, adjusted from the interim final rule with actual expenditures during the first fiscal year of program operation and accordingly, an expanded range for the time period covered. As participants become more accustomed to the program and due to the decreased burden for participants in subsequent years after their Plans are approved, AMS reasonably expects the transfer value to increase 25 percent, year-over-year, for the first 7 years, and held constant in the out years.

TABLE 1—ACCOUNTING STATEMENT

| | Primary estimate | Year dollar | Discount rate (%) | Period covered |
|---|---|---|---|---|
| Benefits— | | | | |
| Annualized Monetized ($millions/year) | 0 | 2022 | 7 | FY 2022–2038 |
| | 0 | 2022 | 3 | |
| Costs— | ..... | ..... | ..... | FY 2022–2038 |
| Annualized Monetized ($millions/year) | 0 | 2022 | 7 | ..... |
| | 0 | 2022 | 3 | |
| | ..... | ..... | ..... | ..... |
| Transfers—From the Federal Government to an eligible partnership | | | | |
| Annualized Monetized ($millions/year) | $21.04 | 2022 | 7 | FY 2022–2038 |
| | $21.84 | 2022 | 3 | |

As the program is voluntary, eligible partnerships are expected to participate if they deem it beneficial depending on their individual circumstances. The transfers will be reimbursements in the form of Federal payments to program participants to help offset costs associated with eligible dairy product donations.

In the normal course of transporting, delivering, and processing milk, a small volume of milk is ''lost'' each month. In the FMMO system, ''normal losses'' are estimated to be 0.25 percent of the total participating milk annually. Under certain conditions, an additional volume of milk cannot make it to market due to extraordinary circumstances, such as extreme weather, plant capacity issues, and market disruptions. This volume above ''normal losses'' is identified as ''excess losses'' in this analysis.

According to FMMO statistics, ''excess losses'' averaged 0.08 percent of the annual volume of milk participating in the FMMO program from 2015 through 2019, excluding the outlying pandemic-influenced years of 2020 and 2021. During these years, the COVID–19 pandemic resulted in higher levels of milk not making it to market, amounting to 0.32 and 0.27 percent, respectively, of the milk that participated in the FMMO program. In the interim final rule, AMS included 2020 in the ''excess loss'' average, but 2020 distorted the value, leading to an overestimate of the amount of milk available to be made into donated products for normal years. In conducting an economic analysis, AMS presumed milk classified as ''excess losses'' could be made into eligible dairy products and donated under the DDP.

To estimate the volume of excess milk potentially donated under the program in this final rule, a 5-year average rate of 0.08 percent for 2015–2019 period is applied to the projected 2023 U.S. milk production volume. Under this assumption, approximately 183 million pounds of milk would be available for dairy processors to make into eligible dairy products for donation to eligible distributors. As in the interim final rule, AMS lacks data to estimate the amount of bulk commodity product available for secondary processors to purchase and further process into eligible dairy products for donation to eligible distributors, so that scenario is not considered in the economic analysis.

AMS estimated the amounts of butterfat and skim solids in the forecasted product volumes available for donation. The product mix includes fluid milk, soft products, cheese, butter, and nonfat dry milk powder volumes, based on the volume of available dairy farmer milk. The set of products utilizes nearly all the butterfat and skim solids present in the milk available for donation. In the case of butter and nonfat dry milk powder, both products can be made from a given amount of milk. Butter requires a large amount of butterfat, while powder utilizes very little butterfat but a large amount of the nonfat solids.

The DDP reimburses EDOs for eligible dairy product donations for the input cost paid for the fluid milk or bulk dairy commodity product, manufacturing cost, and transportation cost. In the interim final rule, AMS estimated the maximum annual reimbursement value given the program's parameters that total reimbursement must be between the highest FMMO Class I value (Dade County, Florida) and the Class IV value (assumed the lowest classified value). Using the same methodology, AMS estimates a maximum reimbursement value of $63 million, using forecasted 2023 FMMO class prices and volume available for donation based on the .08 percent excess loss assumption and USDA's November 2022 *World Agricultural Supply and Demand Estimates* (WASDE).

In practice, AMS expects actual reimbursement expenditures to be lower. During the first year of operation, DDP expended $5,834,353,[13] representing 22,562,669 pounds of donated dairy products (equivalent to 27,576,312 milk pounds). Therefore, for this final rule, AMS determines it more appropriate to estimate annual DDP expenditures based on actual spending. Accordingly, expenditures are estimated to be 125 percent of the previous year and held constant after 7 years. This is a reasonable assumption given reduced participant burden and increased awareness and familiarity with the program is expected to increase participation.

In addition, normal fluctuation in market prices may contribute to increased donations in times of low milk prices, and subsequently higher program expenditures. For example, it is normal for excess milk to be made into storable products such as butter. Relatively high butter prices in 2022 indicated a tight butter market resulting in excess milk made into butter to be sold in the marketplace instead of donated through the DDP. USDA expects butter prices to be lower in 2023, as compared to 2022, due to weaker demand and lower international prices, thus increasing DDP expenditures as the possibility rises that surplus milk used for butter is made available for donation.

As described above, AMS estimates that 183 million pounds (0.08 percent of projected 2023 production) of excess milk could be available to be processed and donated through the DDP. Consequently, AMS does not anticipate this small additional processing volume will impact milk prices. AMS anticipates dairy processors already donating dairy products to non-profit feeding organizations will become eligible for reimbursement through DDP. These donations are not new production

[13] This figure represents Reimbursement Claims submitted in the first year of DDP operation (October 1, 2021, through Sept 30, 2022), for product donated from January 1, 2020, to September 30, 2022.

volume to be priced as they represent dairy products already processed and priced somewhere in the dairy supply chain. The DDP does not intend to reimburse for the full cost of processing and delivering donated dairy products but rather encourages excess milk to be used.

This program is expected to have a negligible impact on retail dairy product sales. Typically, populations that receive dairy products from non-profit feeding organizations do so when they cannot buy dairy products at retail outlets. Since the DDP reimbursement rate does not cover all processing and transportation costs it is not a financially prudent decision to divert milk from retail outlets to donations. The following table provides examples of costs included and excluded from reimbursement under the DDP. This is not an all-inclusive listing but is intended to demonstrate how dairy product donations through this program are not expected to be a substitute for retail dairy product sales.

TABLE 2—EXAMPLES OF COSTS INCLUDED AND EXCLUDED

| Cost factor | Includes | Does NOT include |
|---|---|---|
| Input | • Minimum classified price of milk used in the donated eligible dairy product. | • Any contractually obligated monies, over the minimum classified value, due to producers.<br>• Assessments for promotion and research programs, if applicable. |
| Manufacturing | • Applicable FMMO manufacturing make allowance, representative of the following costs:.<br>• Processing Labor<br>• Utilities<br>• Non-Labor<br>• General and Administrative<br>• Packaging into a commodity volume | • Additional ingredient costs (*i.e.,* fruit for fruit-flavored yogurt).<br>• Storage and inventory costs.<br>• Costs of participating in the mandatory Dairy Product Mandatory Reporting Program. |
| Transportation | • Fuel: Shortest hard surface mileage * monthly diesel price * 6.1 miles per gallon. | • Vehicle maintenance.<br>• Vehicle depreciation.<br>• Licensing and other administrative fees. |

In addition, DDP is a voluntary program and reimbursements occur after donations are made. Donations made through this program are made privately without donation volumes being announced in advance, reducing the impact on dairy markets compared to making advanced announcements on expected donation volume.

**Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), AMS has considered the economic impact of the action on small entities. Accordingly, AMS prepared this Regulatory Flexibility Analysis (RFA).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so small businesses will not be unduly or disproportionately burdened. Small dairy farms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those businesses having annual gross receipts of $3.75 million or less. The SBA's definition of small agricultural service firms, which includes dairy processors, varies based on the type of dairy product manufactured. Small dairy processors are defined as having between 750 and 1,250 or fewer employees depending on the products made.

According to the 2017 USDA National Agricultural Statistics Service (NASS) Census Report, the most recent report, there were 39,303 farms with milk sales. AMS estimates 36,158 farms, or 92 percent, are considered small businesses. Dairy farmers of all sizes may benefit from the program as it encourages donations of dairy products which contain milk purchased from them. DDP is designed to reduce food waste by providing alternative outlets for milk to be utilized in donated products instead of being dumped due to oversupply. Often milk is dumped from smaller dairy farms that are more costly to service because their pickups may be less than a full tanker load and/or they may be located farther from major trucking routes. By providing cost reimbursement for donated products, the DDP incentivizes processors to pick up and process the milk into products for donation rather than having it dumped.

AMS estimates approximately 3,000 plants, owned by approximately 1,500 entities, manufacture dairy products in the United States. According to AMS calculations, about 10 percent are operated by dairy farmer cooperatives, while the remaining are independently owned. AMS believes 1,500 to be the universe of EDOs that could participate in the DDP. Of the potential EDOs, 90 percent would be considered small businesses based on total employee numbers.

Participating in the DDP will not unduly or disproportionately burden small dairy processing entities. All entities, regardless of size, can apply for the program if they file a report with an FMMO and incur a qualified expense as defined by program provisions. Program provisions are administered without regard to business size. The paperwork required to participate asks for information that is part of normal business records.

The definition of an eligible distributor is a public or private non-profit feeding organization that distributes or coordinates distribution of donated eligible dairy products to recipient individuals and families. Eligible distributors, regardless of size, can voluntarily participate in the DDP if they form a partnership with an EDO. The information collection burden for eligible distributors is minimal as they must only complete the Certification Form with the partnering EDO. The voluntary nature of the program allows any eligible distributor to stop participating if they find the program causes an undue or disproportionate burden.

AMS has determined this program does not have a significant economic impact on small entities. Program provisions are applied uniformly to both large and small businesses and are not expected to burden small entities unduly or disproportionately.

**Executive Order 13175**

In the interim final rule, AMS assessed the impact of this program on

Indian Tribes and determined it would not have Tribal implications requiring consultation under Executive Order 13175. Since the final rule does not include any changes affecting Tribal implications of the DDP, additional review is not necessary. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on: (1) policies that have Tribal implication, including regulation, legislative comments, or proposed legislation; and (2) 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.

Tribal governments operating non-profit organizations feeding recipient individuals and families can qualify as eligible distributors and thus benefit from participation in the DDP. The regulatory burden from participating is minimal, estimated at 15 minutes for completing an Eligible Distributor Certification Form.

AMS hosts a quarterly teleconference with Tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the final rule will be shared in an upcoming quarterly call. AMS will continue to work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the DDP.

**Executive Order 12988**

The interim final rule was reviewed under Executive Order 12988—Civil Justice Reform. Since the final rule does not include any changes affecting the civil justice implications of the DDP, additional review is not necessary. This final rule may have a retroactive effect. Claims submitted after the effective date of this final rule for donations made starting January 1, 2020, are eligible for reimbursement under this rule's amended provisions if the eligible partnership's Dairy Donation and Distribution Plan is approved and if the partnership met all other program requirements. Dairy donations made prior to 2020 are not eligible for reimbursement under the program. The provisions amended by this final rule are not retroactive to Claims already submitted and processed prior to this rule's effective date. There are no administrative procedures that must be exhausted prior to judicial challenges to the provisions of this rule. The DDP does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

**Civil Rights Review**

AMS considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities who are subject to these regulations. This final rule does not require affected entities to relocate or alter their operations in ways adversely affecting such persons or groups. Further, this rule does not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

AMS found no evidence this voluntary program and the associated final rule causes adverse or disproportionate impacts on minorities, women, and persons with disabilities. The AMS analysis found no evidence of potential impacts affecting dairy farmers or processors in any protected groups, or that these impacts will be different than any participating general population of dairy farmers and processors.

**Executive Order 13132**

AMS examined the effects of provisions in this final rule on the relationship between the Federal Government and the States, as required by Executive Order 13132 on ''Federalism.'' The DDP reimburses EDOs for eligible dairy products donated to eligible distributors. The DDP does not preempt any State or local laws, regulations, or policies pertaining to the sale, manufacturing or distribution of milk or dairy products within States.

**List of Subjects**

*7 CFR Part 1146*

Milk, Donations, Reporting and recordkeeping requirements.

*7 CFR Part 1147*

Dairy, Donations, Food waste, Emergency, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR chapter X is amended as follows:

## PART 1146—MILK DONATION REIMBURSEMENT PROGRAM

■ 1. The authority for part 1146 continues to read as follows:

**Authority:** Sec. 1431, Pub. L. 113–79, 128 Stat. 695, as amended.

■ 2. Amend § 1146.102 by revising paragraph (a) to read as follows:

**§ 1146.102 Dairy donation and distribution plans.**

* * * * *

(a) The physical address(es) of the eligible dairy organization's processing plant(s), co-pack facility(ies), and distribution center(s), and the eligible distributor's distribution site(s);

* * * * *

■ 3. Amend § 1146.106 by revising paragraph (a)(1)(ii) to read as follows:

**§ 1146.106 Reimbursement Claims.**

(a) * * *

(1) * * *

(ii) The physical address(es) of the plant(s) or co-pack facility(ies) that processed and, if applicable, distribution center(s) that stored the donated dairy products;

* * * * *

## PART 1147—DAIRY DONATION PROGRAM

■ 4. The authority for part 1147 continues to read as follows:

**Authority:** Sec. 762, Pub. L. 116–260, 134 Stat. 1182.

■ 5. Amend § 1147.102 by revising paragraph (a) to read as follows:

**§ 1147.102 Dairy donation and distribution plans.**

* * * * *

(a) The physical address(es) of the eligible dairy organization's processing plant(s), co-pack facility(ies), and distribution center(s), and the eligible distributor's distribution site(s);

* * * * *

■ 6. Amend § 1147.106 by revising paragraph (a)(1)(ii) to read as follows:

**§ 1147.106 Reimbursement Claims.**

(a) * * *

(1) * * *

(ii) The physical address(es) of the plant(s) or co-pack facility(ies) that processed and, if applicable, distribution center(s) that stored the donated dairy products;

* * * * *

■ 7. Amend § 1147.108 by revising paragraphs (a)(2)(i) and (a)(3)(iii) to read as follows:

**§ 1147.108 Reimbursement calculation.**

(a) * * *

(2) * * *

(i) If a Class I product, the simple average of the Class III and Class IV manufacturing allowances applies;

* * * * *

(3) * * *

(iii) The fuel economy rate of 6.1 miles per gallon.

* * * * *

**§ 1147.212 [Removed]**

■ 8. Remove § 1147.212.

**Erin Morris,**

*Associate Deputy Administrator, Agricultural Marketing Service.*

[FR Doc. 2023–18148 Filed 8–23–23; 8:45 am]

**BILLING CODE P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 1, 2, 26, 32, 40, 50, 51, 52, 72, and 73

**[NRC–2022–0216]**

**RIN 3150–AK92**

### Miscellaneous Corrections

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. These changes include updating organizational information, revising an address, and correcting reference, spelling, and grammatical errors. The amendments also make updates to replace gendered terms with inclusive, gender-neutral language. This document is necessary to inform the public of these non-substantive amendments to the NRC's regulations.

**DATES:** This final rule is effective on September 25, 2023.

**ADDRESSES:** Please refer to Docket ID NRC–2022–0216 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0216. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* The PDR, where may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Krupskaya Castellon, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9221, email: *Krupskaya.Castellon@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. Introduction

The NRC is amending its regulations in parts 1, 2, 26, 32, 40, 50, 51, 52, 72, and 73 of title 10 of the *Code of Federal Regulations* (10 CFR). The NRC is making these amendments to update organizational information, revise an address, and correct reference, spelling, and grammatical errors. This rule also makes updates to replace gendered terms with inclusive, gender-neutral language.

## II. Summary of Changes

*10 CFR Part 1*

*Update Organization and Functions.* In § 1.42 concerning the Office of Nuclear Material Safety and Safeguards, this final rule revises the introductory text for paragraph (b)(26). The rule also revises paragraph (b)(30) to list financial assurance activities and adds a new paragraph (b)(33) to list duties for environmental activities. This final rule updates the regulations to align more closely with Commission direction in SRM–SECY–15–0143, ''Project Aim and Centers of Expertise,'' dated February 22, 2016 (Agencywide Documents Access and Management System ML16053A500) regarding Centers of Expertise.

*Update Organizational Functions.* In § 1.43, this final rule moves responsibility for review and evaluation related to reactor facilities insurance, indemnity, and antitrust matters from the Office of Nuclear Reactor Regulation to the Office of Nuclear Material Safety and Safeguards.

*10 CFR Part 2*

*Revise Nomenclature.* This final rule revises 10 CFR part 2 to replace gendered terms with inclusive, gender-neutral language.

*Correct Reference.* In § 2.1202(a)(1), this final rule removes the incorrect reference to 10 CFR 50.12 and replaces it with the correct reference 10 CFR 50.10.

*10 CFR Parts 26, 50, 52, and 73*

*Revise Street Address.* This final rule amends §§ 26.11, 50.4(a), 52.3(a), and 73.4(b) to add the mailing zip code for the hand delivery method for communications.

*10 CFR Part 32*

*Correct Reference.* In 10 CFR 32.72(a)(2)(i), this final rule removes the incorrect reference to 21 CFR 207.20 and replaces it with the correct reference 21 CFR 207.17(a).

*10 CFR Part 40*

*Correct Spelling.* This final rule amends Appendix A to part 40 to remove the text ''meterology'' and add in its place the text ''meteorology.''

*10 CFR Part 50*

*Correct Typographical Error.* This final rule removes a duplicative phrase in the introductory text of § 50.55a(b)(2)(xliii).

*Correct Reference.* This final rule reverts an inadvertent change to a reference in Appendix H paragraph III.B.1 that occurred during a direct final rulemaking (85 FR 62199) by removing the incorrect reference to ASTM E 185 and replacing it with ASTM E 185–82.

*10 CFR Part 51*

*Correct Reference.* In § 51.77(a), this final rule removes the incorrect reference to appendix M and replaces it with the correct reference subpart F.

*10 CFR Part 72*

*Correct Spelling.* This final rule amends § 72.3 to remove the text ''radioacive'' and add in its place the text ''radioactive.''

*10 CFR Part 73*

*Correct Grammatical Error.* In § 73.50, this final rule adds the indefinite article ''a'' before the words ''nuclear reactor'' in the introductory text.

**III. Rulemaking Procedure**

Under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive publication in the **Federal Register** of a notice of proposed rulemaking and opportunity for comment requirements if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on these amendments, because notice and opportunity for comment is unnecessary. The amendments will have no substantive impact and are of a minor and administrative nature dealing with corrections to certain CFR sections or are related only to management, organization, procedure, and practice. Specifically, the revisions update organizational information and correct references, grammatical and spelling errors, and make updates to replace gendered terms with inclusive, gender-neutral language. The NRC is exercising its authority under 5 U.S.C. 553(b) to publish these amendments as a final rule. The amendments are effective September 25, 2023. These amendments do not require action by any person or entity regulated by the NRC and do not change the substantive responsibilities of any person or entity regulated by the NRC.

**IV. Backfitting and Issue Finality**

The NRC has determined that the corrections in this final rule would not constitute backfitting as defined in § 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests.'' These corrections also would not constitute forward fitting as that term is defined and described in MD 8.4 or affect the issue finality of any approval issued under 10 CFR part 52. The amendments are non-substantive in nature, and include updates to organizational information, corrections to references, grammatical errors and spelling, and make updates to replace gendered terms with inclusive, gender-neutral language. They impose no new requirements and make no substantive changes to the regulations. The corrections do not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or that would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of this final rule would not constitute backfitting or be inconsistent with any of the issue finality provisions in 10 CFR part 52. Therefore, the NRC has not prepared any additional documentation for this correction rulemaking addressing backfitting or issue finality.

**V. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

**VI. National Environmental Policy**

The NRC has determined that this final rule is the type of action described in § 51.22(c)(2), which categorically excludes from environmental review rules that are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

**VII. Paperwork Reduction Act**

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

**VIII. Congressional Review Act**

This final rule is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

**IX. Compatibility of Agreement State Regulations**

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** (82 FR 48535), NRC program elements (including regulations) required for adequacy and having a particular health and safety component are those that are designated as Categories A, B, C, D, NRC, and H&S: and those required for compatibility include those regulations and other legally binding requirements designated as Compatibility Categories A, B, C, and D. Compatibility Category A are those program elements that include basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. Compatibility Category B pertains to a limited number of program elements that cross jurisdictional boundaries and should be addressed to ensure uniformity of regulation on a nationwide basis. The Agreement State program element should be essentially identical to that of NRC. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and, thus, do not need to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of title 10 of the *Code of Federal Regulations.* These program elements should not be adopted by the Agreement States. Category H&S program elements are not required for purposes of compatibility; however, they do have particular health and safety significance. The Agreement State should adopt the essential objectives of such program elements to maintain an adequate program.

The final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The compatibility categories are designated in the following table:

COMPATIBILITY TABLE

| Section | Change | Subject | Compatibility | |
|---|---|---|---|---|
| | | | Existing | New |
| Part 32: | | | | |
| § 32.72(a)(2)(i) | Amend | Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under part 35. | B | B |
| Part 40: | | | | |
| Introduction to Appendix A to 10 CFR part 40. | Amend | Introduction | C | C |

**List of Subjects**

*10 CFR Part 1*

Flags, Organization and functions (Government Agencies), Seals and insignia.

*10 CFR Part 2*

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

*10 CFR Part 26*

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power plants and reactors, Privacy, Protection of information, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 32*

Byproduct material, Criminal penalties, Labeling, Nuclear energy, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 40*

Criminal penalties, Exports, Government contracts, Hazardous materials transportation, Hazardous waste, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Source material, Uranium, Whistleblowing.

*10 CFR Part 50*

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

*10 CFR Part 51*

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

*10 CFR Part 52*

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Inspection, Issue finality, Limited work authorization, Manufacturing license, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

*10 CFR Part 72*

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

*10 CFR Part 73*

Criminal penalties, Exports, Hazardous materials transportation, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 2, 26, 32, 40, 50, 51, 52, 72, and 73.

## PART 1—STATEMENT OF ORGANIZATIONAL AND GENERAL INFORMATION

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

**Authority:** Atomic Energy Act of 1954, secs. 23, 25, 29, 161, 191 (42 U.S.C. 2033, 2035, 2039, 2201, 2241); Energy Reorganization Act of 1974, secs. 201, 203, 204, 205, 209 (42 U.S.C. 5841, 5843, 5844, 5845, 5849); Administrative Procedure Act (5 U.S.C. 552, 553); Reorganization Plan No. 1 of 1980, 5 U.S.C. Appendix (Reorganization Plans).

■ 2. In § 1.42, revise paragraphs (b)(26) introductory text and (b)(30) and add paragraph (b)(33) to read as follows:

**§ 1.42 Office of Nuclear Material Safety and Safeguards.**

* * * * *

(b) * * *

(26) Through a Center of Expertise, leads, manages and facilitates the following rulemaking activities:

* * * * *

(30) Through a Center of Expertise, plans and directs program for financial assurance of NRC licensees including:

(i) Ensuring licensee compliance with decommissioning funding assurance requirements.

(ii) Preparing safety evaluations for power reactor and research and test reactors, applicants for new reactors, and for actions associated with license transfers and exemption requests in which financial qualifications and decommissioning funding assurance requirements for reactor licensees are assessed.

(iii) Ensuring compliance with power reactor financial protection requirements in the form of insurance and indemnity coverage, and evaluation of foreign ownership, control, or domination concerns for potential new licensees; and

(iv) Ensuring that materials and Independent Spent Fuel Storage Installation licensees meet decommissioning funding assurance requirements.

(v) Performing review and evaluation related to reactor facilities insurance, indemnity, and antitrust matters.

* * * * *

(33) Through a Center of Expertise, supports public health, safety, and the environment through activities including:

(i) Leading environmental reviews for the NRC's licensing actions as required by the National Environmental Policy Act, the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, National Marine Sanctuaries Act, and the National Historic Preservation Act; and

(ii) Developing and issuing Environmental Impact Statements and Environmental Assessments, and coordinating these activities with other Federal, State, Tribal and local agencies; and

(iii) Monitoring licensee adherence to endangered and threatened species take limits and consulting with other Federal agencies on endangered and threatened species, critical habitats, essential fish habitats, and national marine sanctuary resources.

■ 3. In § 1.43, revise paragraphs (e) and (f) and remove paragraph (g).

The revisions read as follows:

**§ 1.43 Office of Nuclear Reactor Regulation.**

* * * * *

(e) Provides guidance and implementation direction to Regional Offices on reactor licensing, inspection, and safeguards programs assigned to the Region, and appraises Regional program performance in terms of effectiveness and uniformity; and

(f) Performs other functions required for implementation of the reactor licensing, inspection, and safeguard programs.

## PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 4. The authority citation for part 2 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note. Section 2.205(j) also issued under 28 U.S.C. 2461 note.

**§ 2.102 [Amended]**

■ 5. In § 2.102, amend the first sentence in paragraph (b) by removing the text ''he'' and adding in its place the text ''the Director''.

**§ 2.103 [Amended]**

■ 6. In § 2.103:

■ a. Amend the first sentence in paragraph (a) by removing the text ''he'' and adding in its place the text ''the Director''; and

■ b. Amend paragraph (b) by removing the text ''he'' and adding in its place the text ''the Director''.

**§ 2.203 [Amended]**

■ 7. In § 2.203, in the third sentence, remove the text ''he'' and add in its place the text ''the presiding officer or Chief Administrative Law Judge''.

**§ 2.206 [Amended]**

■ 8. In § 2.206, amend the second sentence in paragraph (c)(1) by removing the text ''his'' and adding in its place the text ''their''.

■ 9. In § 2.313, revise paragraphs (b)(1) and (2) and (c) introductory text to read as follows:

**§ 2.313 Designation of presiding officer, disqualification, unavailability, and substitution.**

* * * * *

(b) * * *

(1) If a designated presiding officer or a designated member of an Atomic Safety and Licensing Board believes that they are disqualified to preside or to participate as a board member in the hearing, they shall withdraw by notice on the record and shall notify the Commission or the Chief Administrative Judge, as appropriate, of the withdrawal.

(2) If a party believes that a presiding officer or a designated member of an Atomic Safety and Licensing Board should be disqualified, the party may move that the presiding officer or the Licensing Board member disqualify themselves. The motion must be supported by affidavits setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion or the Licensing Board member does not disqualify themselves, the motion must be referred to the Commission. The Commission will determine the sufficiency of the grounds alleged.

*(c) Unavailability.* If a presiding officer or a designated member of an Atomic Safety and Licensing Board becomes unavailable during the course of a hearing, the Commission or the Chief Administrative Judge, as appropriate, will designate another presiding officer or Atomic Safety and Licensing Board member. If they become unavailable after the hearing has been concluded, then:

* * * * *

■ 10. Revise § 2.316 to read as follows:

**§ 2.316 Consolidation of parties.**

On motion or on its own initiative, the Commission or the presiding officer may order any parties in a proceeding who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. However, it may not order any consolidation that would prejudice the rights of any party. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

**§ 2.337 [Amended]**

■ 11. In § 2.337:

■ a. Amend paragraph (e) by removing the text ''his'' and adding in its place the text ''their'';

■ b. Amend paragraph (g)(1) by removing the text ''his or her'' and adding in its place the text ''their'';

■ c. Amend paragraph (g)(2)(iv) by removing the text ''his or her'' and adding in its place the text ''their''; and

■ d. Amend paragraph (g)(3)(iv) by removing the text ''his or her'' and adding in its place the text ''their''.

■ 12. In § 2.604, revise paragraph (c) to read as follows:

**§ 2.604 Notice of hearing on application for early review of site suitability issues in construction permit proceeding.**

* * * * *

(c) Any person who was permitted to intervene as a party under the initial notice of hearing on site suitability issues and who was not dismissed or did not withdraw as a party may continue to participate as a party to the proceeding with respect to the remaining unresolved issues, provided that within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, they file a notice of their intent to continue as a party, along with a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which they wish to continue to participate as a party and setting forth with particularity the basis

for their contentions with regard to each aspect or aspects. A party who files a non-timely notice of intent to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good cause for failure to file on time, and with particular reference to the factors specified in § 2.309(c)(1)(i) through (iv) and (d). The notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

* * * * *

**§ 2.702 [Amended]**

■ 13. In § 2.702:

■ a. Amend the first sentence in paragraph (a) by removing the text ''he or she is'' and adding in its place the text ''they are''; and

■ b. Amend paragraph (f) introductory text by removing the text ''he is'' and adding in its place the text ''they are''.

**§ 2.703 [Amended]**

■ 14. In § 2.703:

■ a. Amend paragraph (a)(3) by removing the text ''he intends'' and adding in its place the text ''they intend'';

■ b. Amend paragraph (a)(4) by removing the text ''himself'' and adding in its place the text ''themselves''; and

■ c. Amend the second sentence in paragraph (b) by removing the text ''his or her'' and adding in its place ''their''.

**§ 2.705 [Amended]**

■ 15. In § 2.705:

■ a. Amend paragraph (b)(2) introductory text in the first sentence by removing the text ''his or her'' and adding in its place the text ''their'' and in the second sentence by removing the text ''he or she determines'' and adding in its place ''they determine''; and

■ b. Amend paragraph (b)(3) by removing the text ''his'' and adding in its place the text ''their'' and by removing the text ''he'' and adding in its place the text ''the party''.

■ 16. In § 2.706:

■ a. Amend paragraph (a)(1) by removing the text ''him'' and adding in its place the text ''them'', and by removing the text ''he belongs'' and adding in its place the text ''they belong'';

■ b. Amend the first sentence of paragraph (a)(4) by removing the text ''his or her'' and adding in its place the text ''their'';

■ c. Amend the first sentence of paragraph (a)(5) by removing the text ''he or she is'' and adding in its place the text ''they are'';

■ d. Revise paragraph (a)(7).

The revision reads as follows:

**§ 2.706 Depositions upon oral examination and written interrogatories; interrogatories to parties.**

(a) * * *

(7) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts. A party does not make a person its own witness for any purpose by taking their deposition.

* * * * *

**§ 2.708 [Amended]**

■ 17. In § 2.708:

■ a. Amend the first sentence of paragraph (a) by removing the text ''his or her'' and adding in its place the text ''its''; and

■ b. Amend paragraph (b)(1)(i) by removing the text ''he'' and adding in its place the text ''it''.

**§ 2.710 [Amended]**

■ 18. In § 2.710:

■ a. Amend the third sentence in paragraph (b) by removing the text ''his'' and adding in its place the text ''its''; and

■ b. Amend the first sentence of paragraph (c) by removing the text ''he or she'' and adding in its place the text ''it''.

**§ 2.711 [Amended]**

■ 19. In § 2.711, amend paragraph (i) by removing the text ''his''.

■ 20. In § 2.905:

■ a. Amend the first sentence of paragraph (a) by removing the text ''his'' and adding in its place the text ''the''; and

■ b. Revise paragraph (b)(1).

The revision reads as follows:

**§ 2.905 Access to restricted data and national security information for parties; security clearances.**

* * * * *

(b) * * *

(1) On application showing that access to Restricted Data or National Security Information may be required for the preparation of a party's case, and except as provided in paragraph (h) of this section, the Commission or the presiding officer will issue an order granting access to such Restricted Data or National Security Information to the party upon obtaining the required security clearance, to counsel for the party upon their obtaining the required security clearance, and to such other individuals as may be needed by the party for the preparation and presentation of the case upon their obtaining the required clearance.

* * * * *

**§ 2.908 [Amended]**

■ 21. In § 2.908, amend paragraph (a)(3) by removing the text ''he'' and adding in its place the text ''the party''.

■ 22. In § 2.909, revise the introductory text and paragraph (c) to read as follows:

**§ 2.909 Rearrangement or suspension of proceedings.**

In any proceeding subject to this part where a party gives a notice of intent to introduce Restricted Data or other National Security Information, and the presiding officer determines that any other interested party does not have required security clearances, the presiding officer may in their discretion:

* * * * *

(c) Take such other action as they determine to be in the best interest of all parties to the public.

■ 23. In § 2.910, revise paragraphs (c) and (d) to read as follows:

**§ 2.910 Unclassified statements required.**

* * * * *

(c) If the presiding officer determines that the unclassified statement, together with such unclassified modifications as they find are necessary or appropriate to protect the interest of other parties and the public interest, adequately sets forth information in the classified matter which is relevant and material to the issues in the proceeding, they shall direct that the classified matter be excluded from the record of the proceeding. The presiding officer's determination will be considered by the Commission as a part of the decision in the event of review.

(d) If the presiding officer determines that an unclassified statement does not adequately present the information contained in the classified matter which is relevant and material to the issues in the proceeding, they shall include their reasons in their determination. This determination shall be included as part of the record and will be considered by the Commission in the event of review of the determination.

* * * * *

**§ 2.1202 [Amended]**

■ 24. In § 2.1202, amend paragraph (a)(1) by removing the reference ''10 CFR 50.12'' and adding in its place the reference ''10 CFR 50.10''.

**§ 2.1207 [Amended]**

■ 25. In § 2.1207, amend paragraph (b)(4) by removing the text ''his'' and adding in its place the text ''their''.

**§ 2.1319 [Amended]**

■ 26. In § 2.1319:
■ a. Amend the third sentence in paragraph (b) by removing the text ''himself'' and adding in its place the text ''themselves''; and
■ b. Amend paragraph (c) by removing the text ''himself or herself'' and adding in its place the text ''themselves'' and by removing the text ''he or she'' and adding in its place the text ''they''.

## PART 26—FITNESS FOR DUTY PROGRAMS

■ 27. The authority citation for part 26 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 103, 104, 107, 161, 223, 234, 1701 (42 U.S.C. 2073, 2133, 2134, 2137, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

**§ 26.11 [Amended]**

■ 28. Amend § 26.11 by adding zip code ''20852–2738'' after ''Maryland''.

## PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 29. The authority citation for part 32 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 81, 161, 170H, 181, 182, 183, 223, 234, 274 (42 U.S.C. 2111, 2201, 2210h, 2231, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

**§ 32.72 [Amended]**

■ 30. In § 32.72, amend paragraph (a)(2)(i) by removing the reference ''21 CFR 207.20(a)'' and adding in its place the reference ''21 CFR 207.17(a)''.

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 31. The authority citation for part 40 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 62, 63, 64, 65, 69, 81, 83, 84, 122, 161, 181, 182, 183, 184, 186, 187, 193, 223, 234, 274, 275 (42 U.S.C. 2092, 2093, 2094, 2095, 2099, 2111, 2113, 2114, 2152, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Uranium Mill Tailings Radiation Control Act of 1978, sec. 104 (42 U.S.C. 7914); 44 U.S.C. 3504 note.

**Appendix A to Part 40—[Amended]**

■ 32. In the fourth paragraph of the the introduction to appendix A to part 40, remove the text ''meterology'' and add in its place the text ''meteorology''.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 33. The authority citation for part 50 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

**§ 50.4 [Amended]**

■ 34. In § 50.4, amend paragraph (a) by adding zip code ''20852–2738'' after ''Maryland''.

**§ 50.55a [Amended]**

■ 35. In § 50.55a, amend the paragraph (b)(2)(xliii) heading by removing the text ''Section XI Condition:''

■ 36. In appendix H to part 50, revise paragraph III.B.1 to read as follows:

**Appendix H to Part 50—Reactor Vessel Material Surveillance Program Requirements**

* * * * *

III. * * *

B. * * *

1. The design of the surveillance program and the withdrawal schedule must meet the requirements of the edition of the ASTM E 185 that is current on the issue date of the ASME Code to which the reactor vessel was purchased; for reactor vessels purchased after 1982, the design of the surveillance program and the withdrawal schedule must meet the requirements of ASTM E 185–82. For reactor vessels purchased in or before 1982, later editions of ASTM E 185 may be used, but including only those editions through 1982. For each capsule withdrawal, the test procedures and reporting requirements must meet the requirements of ASTM E 185–82 to the extent practicable for the configuration of the specimens in the capsule. If any of the optional provisions in paragraphs III.B.4(a) through (d) of this section are implemented in lieu of ASTM E 185, the number of specimens included or tested in the surveillance program shall be adjusted as specified in paragraphs III.B.4(a) through (d) of this section.

* * * * *

## PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 37. The authority citation for part 51 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168).

Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141).

Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

**§ 51.77 [Amended]**

■ 38. In § 51.77, amend paragraph (a) introductory text by removing the reference ''appendix M'' and adding in its place the reference ''subpart F''.

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 39. The authority citation for part 52 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

**§ 52.3 [Amended]**

■ 40. In § 52.3, amend paragraph (a) by adding zip code ''20852–2738'' after ''Maryland''.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH–LEVEL RADIOACTIVE WASTE, AND REACTOR–RELATED GREATER THAN CLASS C WASTE

■ 41. The authority citation for part 72 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

**§ 72.3 [Amended]**

■ 42. In § 72.3, amend the definition of ''High-level radioactive waste or HLW'', in paragraph (1), by removing the text ''radioacive'' and adding in its place the text ''radioactive.''

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

**Authority:** Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 161A, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 44. In § 73.4 revise paragraph (b) to read as follows:

**§ 73.4 Communications.**

* * * * *

(b) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland 20852–2783;

* * * * *

**§ 73.50 [Amended]**

■ 45. In § 73.50, amend the introductory text by adding the article ''a'' before the words ''nuclear reactor''.

Dated: August 18, 2023.

For the Nuclear Regulatory Commission.

**Cindy K. Bladey,**

*Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2023–18183 Filed 8–23–23; 8:45 am]

**BILLING CODE 7590–01–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1614

**RIN 3046–AB23**

### Federal Sector Equal Employment Opportunity

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is issuing a final rule revising its Federal sector complaint processing regulations to allow for the digital transmission of equal employment opportunity hearing and appellate documents and to address various uses of the Commission's Electronic Public Portal.

**DATES:** Effective August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Oram, Assistant Legal Counsel, at (202) 921–2665 or *kathleen.oram@eeoc.gov*, or Gary J. Hozempa, Senior Staff Attorney, at (202) 921–2672 or *gary.hozempa@eeoc.gov*, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission. Requests for this document in an alternative format should be made to the EEOC's Office of Communications and Legislative Affairs at (202) 921–3191 (voice), 1–800–669–6820 (TTY), or 1–844–234–5122 (ASL video phone).

**SUPPLEMENTARY INFORMATION:**

#### Introduction

On September 27, 2022, the EEOC published in the **Federal Register** a Notice of Proposed Rulemaking (''NPRM'') announcing its intention to amend 29 CFR part 1614 by authorizing the EEOC, the Office of Federal Operations (''OFO''), and the EEOC's Administrative Judges (''AJs'') to issue and receive documents electronically instead of, or in addition to, using first class U.S. mail (''first class mail''). Currently, 29 CFR 1614.109(i) provides that an AJ ''shall send copies of the hearing . . . decision to the parties.'' Section 1614.405(a) requires that a Commission appellate decision be ''transmitted to the complainant and the agency by first class mail.'' The NPRM proposed authorizing the Commission to transmit its hearing and appellate decisions, orders, and related documents to registered complainants through the EEOC Electronic Public Portal (''Public Portal'' or ''Portal''). It also was proposed that complainants could file hearing requests, appeals, and related documents through the Portal. The NPRM further proposed requiring agencies to notify complainants that they can use the Public Portal to file hearing requests and appeals. Finally, the NPRM asked commenters to address when an EEOC decision transmitted through the Portal should be considered to be received.

The final rule formalizes the current use of electronic communications between the EEOC and its stakeholders by explicitly providing for the digital transmission of complaint files, hearing requests and associated documents, appeals and associated documents, and Commission decisions. The final rule confirms that the digital receipt of hearing requests, appeals, Commission hearing and appellate decisions, and related documents, is equivalent to receipt by first class mail. Nevertheless, the final rule makes clear that a complainant's use of the Portal is voluntary.

Thus, for complainants who choose not to establish a Portal account, or who establish an account but do not agree to receive EEOC communications only through the Portal, OFO will use first class mail to communicate with, and send documents to, complainants, even while transmitting the same documents to agencies via FedSEP (the EEOC's separate electronic Portal for agency-only use); AJs also will use email to transmit documents. These same complainants will be able to file hearing requests, appeals, and related documents through the current methods available (first class and registered mail, facsimile, personal delivery, and email).

#### Comments Generally

The EEOC received five comments about the NPRM, four from individuals and one from an attorney organization (''organization''). The commentors generally favor authorizing the EEOC and its AJs to transmit decisions and orders through the Portal. They also approve of allowing complainants to use the Portal to transmit hearing and appellate requests and documents. The organization opposes certain proposals while it and some of the individuals recommend specific modifications. Most provided suggestions regarding determining a receipt date for Portal-transmitted decisions.

#### Specific Comments and EEOC's Response

*Complainant Opt-In To Communicate via the Portal*

The NPRM provided that, where a complainant registers with the Portal, the EEOC will communicate with the complainant only through the Portal unless and until the complainant informs the EEOC that they want to receive EEOC documents by first class mail. The organization argues for a final rule specifying that a complainant will receive documents electronically only after the complainant affirmatively consents, or opts-in, to receive documents through the Portal. It further proposes that, even when providing consent, the complainant should retain the option to send and receive documents by other methods, such as first class mail, in addition to receiving these same documents through the Portal. To this end, the organization proposes that a final rule should require agencies and the EEOC to provide complainants with relevant contact information for all filing methods

during all stages of the complaint process.

The EEOC agrees that complainants who establish Portal accounts should be given an opportunity to affirmatively declare whether they agree to receive documents only through the Portal. A functionality will be added to the Portal for complainants to indicate this preference. Complainants who do not give their consent will receive OFO communications through first class mail and AJ communications through first class mail or email (if they provide an email address). However, the EEOC does not think it efficient to continue to use first class mail or other methods of communicating after a complainant affirmatively agrees to communicate via the Portal. Receipt by OFO of documents in the same matter through multiple means will complicate OFO recordkeeping, increase expenses, and cause delays.

Regarding addressing the various ways a complainant may communicate with an agency, the EEOC declines to implement the organization's recommendations as they exceed the scope of this rule. The EEOC did not intend to address in this rulemaking either an agency's communication methods with a complainant or a complainant's communication methods with an agency. Absent an opportunity for public comment on these matters, it is not appropriate to address them in this final rule.

*Receipt Date of Decisions Issued via the Portal*

As noted earlier, the NPRM specifically asked commenters to suggest when a decision or other document sent through the Portal should be deemed to be received by the complainant. Three individuals suggest that the receipt date should be the date the decision is first accessed by the complainant, regardless of when it is uploaded to the Portal. Two of these individuals stated that if the EEOC uses a standard such as, ''a decision is deemed to be received within X days of when it is uploaded to the Portal,'' the rule also should state that this presumption does not apply if the EEOC learns that the decision ''did not reach the person to be served.''

The organization suggests creating two separate rules regarding receipt dates, depending on whether only the Portal is used, or email is used as well. If only email is used, the organization favors a rebuttable receipt date of seven days from the date of the email. If only the Portal is used, receipt should be deemed to occur when the complainant downloads the document. If both means of transmittal are used, the receipt date should be the date the decision is accessed via the Portal or email, or seven days after the email is sent, whichever occurs first.

The EEOC appreciates receiving these suggestions about a receipt date and concludes that it will address this topic based on these submissions. The final rule borrows from some of the comments and 29 CFR 1614.604(b), which deems receipt of regular mail to occur within five days of when a document is mailed. Thus, for Portal, email, and all other digital communications, the final rule provides that receipt is deemed to occur when a document is accessed on the Portal or received via electronic means, or within 5 days of when a document is uploaded to the Portal or transmitted electronically, whichever occurs first. Further, 29 CFR 1614.604(c), which allows equitable tolling of time frames, will apply to all transmissions, digital or otherwise. Finally, 29 CFR 1614.605(d) provides that receipt of a document is calculated from the complainant's receipt, unless the complainant is represented by an attorney, in which case the attorney's receipt controls. This provision requires no edits to apply to digital receipts.

*Useability of the Portal*

The organization discusses difficulties it and its clients have had with certain features of the Portal. The organization offers a number of proposed technical enhancements to the Portal designed to make the Portal more user-friendly. These suggestions, while helpful, are not the proper subject matter for this final rule. Nevertheless, the EEOC will continue to work with its stakeholders to improve the functionality of the Public Portal (and FedSEP).

**Regulatory Procedures**

*Executive Order 12866*

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This NPRM is not a ''significant regulatory action'' under section 3(f) of the order and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order.

*Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This final rule contains no new information collection requirements on the public, and therefore, it creates no new paperwork burdens or modifications to existing burdens subject to review by the Office of Management and Budget.

*Regulatory Flexibility Act*

The Commission certifies under 5 U.S.C. 605(b) that this NPRM will not have a significant economic impact on a substantial number of small entities because it applies exclusively to employees, applicants for employment, and agencies of the Federal Government and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act of 1995*

This NPRM will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Congressional Review Act*

This NPRM does not substantially affect the rights or obligations of non-agency parties and, accordingly, it is not a ''rule'' pursuant to the Congressional Review Act. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 29 CFR Part 1614**

Administrative practice and procedure, Age discrimination, Color discrimination, Equal employment opportunity, Equal pay, Genetic information discrimination, Government employees, Individuals with disabilities, National origin discrimination, Pregnancy discrimination, Race discrimination, Religious discrimination, Sex discrimination.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission amends chapter XIV of title 29 of the Code of Federal Regulations as follows:

## PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY [AMENDED]

■ 1. The authority citation for 29 CFR part 1614 continues to read as follows:

**Authority:** 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16 and 2000ff–6(e); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O.

12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

■ 2. Amend § 1614.108 by:
■ a. Adding a sentence at the end of paragraph (f); and
■ b. Revising the first sentence in paragraph (h).

The additions read as follows:

**§ 1614.108 Investigation of complaints.**

* * * * *

(f) * * * The notice that the complainant has the right to request a hearing and decision from an administrative judge shall inform the complainant that the hearing request may be filed using the EEOC Public Portal, available at *https://publicportal.eeoc.gov.*

* * * * *

(h) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the agency's acknowledgment letter, or by filing a request for a hearing through the EEOC Public Portal.

* * * * *

**§ 1614.109 [Amended]**

■ 3. In § 1614.109 amend paragraph (i) in the second sentence by removing the word ''send'' and adding in its place the word ''transmit''.

■ 4. Amend § 1614.110 by adding paragraph (c) to read as follows:

**§ 1614.110 Final action by agencies.**

* * * * *

(c) When an agency takes final action by issuing a final order or decision that requires the agency to include a notice that the complainant has the right to file an appeal with the EEOC, the notice shall inform the complainant that the appeal may be filed using the EEOC Public Portal, available at *https://publicportal.eeoc.gov.*

■ 5. Amend § 1614.204 by adding sentences at the end paragraphs (j)(1) and (l)(3) to read as follows:

**§ 1614.204 Class complaints.**

* * * * *

(j)(1) * * * When an agency takes final action by issuing a final order or decision that requires the agency to include a notice that the class agent has the right to file an appeal with the EEOC, the notice shall inform the class agent that the appeal may be filed using the EEOC Public Portal, available at *https://publicportal.eeoc.gov.*

* * * * *

(l)(3) * * * When an agency takes final action by issuing a final order or decision that requires the agency to include a notice that the class member has the right to file an appeal with the EEOC, the notice shall inform the class member that the appeal may be filed using the EEOC Public Portal, available at *https://publicportal.eeoc.gov.*

**§ 1614.403 [Amended]**

■ 6. Amend § 1614.403 paragraph (a) by adding the words ''by email, or through FedSEP or the EEOC's Public Portal, as applicable,'' after the word ''electronically''.

■ 7. Amend § 1614.405 by revising paragraph (a) to read as follows:

**§ 1614.405 Decisions on appeals.**

(a) The Office of Federal Operations, on behalf of the Commission, shall issue a written decision setting forth its reasons for the decision. The Commission shall dismiss appeals in accordance with §§ 1614.107, 1614.403(c) and 1614.409. The decision shall be based on the preponderance of the evidence. The decision on an appeal from an agency's final action shall be based on a de novo review, except that the review of the factual findings in a decision by an administrative judge issued pursuant to § 1614.109(i) shall be based on a substantial evidence standard of review. If the decision contains a finding of discrimination, appropriate remedy(ies) shall be included and, where appropriate, the entitlement to interest, attorney's fees or costs shall be indicated. The decision shall reflect the date of its issuance, inform the complainant of his or her civil action rights, and be transmitted to the complainant and the agency. For complainants who are not registered with the EEOC Public Portal, the decision will be transmitted by first class mail. For complainants who are registered with the Public Portal, the decision will be transmitted via the Portal provided the complainant affirmatively consents to receive the decision through the Portal. For registered complainants who do not provide affirmative consent, and for complainants who affirmatively consent but subsequently notify the Commission that they withdraw their consent, the decision will be transmitted by first class mail. The Commission will transmit the decision to the agency via FedSEP.

* * * * *

■ 8. Amend § 1614.604 by:
■ a. Redesignating paragraphs (c) and (d) as paragraphs (f) and (g).
■ b. Adding new paragraphs (c), (d), and (e).

The additions read as follows:

**§ 1614.604 Filing and computation of time.**

* * * * *

(c) A hearing request, appeal, brief, or other document filed by a complainant using the EEOC Public Portal, or filed by an agency using FedSEP, shall be deemed filed on the date the document is uploaded to the Public Portal or FedSEP. The timeliness of documents submitted through the Public Portal and FedSEP will be determined based on the time zone from which the document was submitted.

(d) An EEOC decision that is transmitted to a complainant through the Public Portal or by email shall be deemed to be received when the decision is accessed on the Portal or when received if transmitted via email, or within five days of when the decision is uploaded to the Portal or emailed, whichever occurs first.

(e) For the purposes of §§ 1614.108, 1614.109, 1614.204(i), and 1614.401 through 1614.405, the terms *accept, file, filed, filing, issue, issuance, issuing, notify, notified, receive, receipt, send, serve, served, service, submit, submission, submitted, transmit,* and *transmitted,* shall include digital transmissions made through FedSEP, the EEOC Public Portal, or by email.

Dated: August 17, 2023.

**Charlotte A. Burrows,**

*Chair.*

[FR Doc. 2023–18100 Filed 8–23–23; 8:45 am]

**BILLING CODE 6570–01–P**

## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

### 30 CFR Part 1206

**[Docket No. ONRR–2011–0016; DS63644000 DRT000000.CH7000 223D1113RT]**

**RIN 1012–AA07**

## Amendments to OMB Control Numbers and Certain Forms; Correction

**AGENCY:** Office of Natural Resources Revenue (''ONRR''), Interior.

**ACTION:** Correcting amendment.

**SUMMARY:** On December 8, 2011, ONRR published a direct final rule that, among other things, corrected a thermal energy displaced equation without updating an image of the equation set forth in the regulations for illustration purposes. This document provides a replacement

thermal energy displaced equation image.

**DATES:** This rule is effective on August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this direct final rulemaking, contact Luis Aguilar, Regulatory Specialist, by phone at (303) 231–3418, or by email at *ONRR_RegulationsMailbox@onrr.gov.*

**SUPPLEMENTARY INFORMATION:** ONRR published a direct final rule in the **Federal Register** on December 8, 2011 (76 FR 76612). ONRR amended the *thermal energy displaced* equation in § 1206.356(a)(2) from ''0.113681'' to ''0.133681.'' Section 1206.356(a)(2) contained an image of the equation for illustration purposes. However, ONRR did not provide an updated equation image. This document provides the correct equation image.

**List of Subjects in 30 CFR Part 1206**

Coal, Continental shelf, Government contracts, Indian lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Accordingly, ONRR amends 30 CFR part 1206 by making the following correcting amendment.

## PART 1206—PRODUCT VALUATION

■ 1. The authority citation for part 1206 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.,* 25 U.S.C. 396, 396a *et seq.,* 398, 398a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

■ 2. In § 1206.356, amend paragraph (a)(2) by revising the equation to read as follows:

**§ 1206.356 How do I calculate royalty or fees due on geothermal resources I use for direct use purposes?**

* * * * *

(a) * * *

(2) * * *

$$\text{thermal energy displaced} = \frac{(h_{in} - h_{out}) \times \text{density} \times 0.133681 \times \text{volume}}{\text{efficiency factor}}$$

* * * * *

**Howard Cantor,**

*Director, Office of Natural Resources Revenue.*

[FR Doc. 2023–18096 Filed 8–23–23; 8:45 am]

**BILLING CODE 4335–30–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–USCG–0689]**

### Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone that encompasses certain navigable waters on Lake Erie, for the Head of the Cuyahoga, in Cleveland, Ohio. This action is necessary and intended for the safety of life and property on navigable waters during this event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo or a designated representative.

**DATES:** The regulation listed in 33 CFR 165.939, Table 165.939 (d)(3) will be enforced from 5 a.m. through 5 p.m. on September 16, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email LT Jared Stevens, Waterways Management Division, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0124, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a Safety Zone; for the Annual Event in the Captain of the Port Buffalo Zone, listed in 33 CFR 165.939, Table 165.939(d)(3) for the Head of the Cuyahoga in Cleveland, Ohio. All U.S. waters of the Cuyahoga River, between a line drawn perpendicular to the river banks from position 41°29′55″ N, 081°42′23″ W (NAD 83) just past the Detroit-Superior Viaduct bridge at MM 1.42 of the Cuyahoga River south to a line drawn perpendicular to the river banks at position 41°28′32″ N, 081°40′16″ W (NAD 83) just south of the Interstate 490 bridge at MM 4.79 of the Cuyahoga River.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or a designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: August 17, 2023.

**M.I. Kuperman,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2023–18268 Filed 8–23–23; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2022–0307; FRL–10892–02–R6]**

### Air Plan Approval; Texas; Updates to Public Notice and Procedural Rules and Removal of Obsolete Provisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on July 9, 2021, and January 21, 2022, that update the air permitting

program by removing obsolete provisions and enhancing public notice requirements of the air permitting program. We are also making ministerial edits to correct several errors identified in the amendatory language for the Texas SIP.

**DATES:** This rule is effective on September 25, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0307. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Adina Wiley, EPA Region 6 Office, Air Permits Section, 214–665–2115, *wiley.adina@epa.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

## I. Background

The background for this action is discussed in detail in our April 21, 2023, proposal (88 FR 24518). In that document we proposed to approve portions of three revisions to the Texas SIP submitted by the TCEQ on July 9, 2021, and January 21, 2022. The first revision, adopted on April 22, 2020, submitted on January 21, 2022, updates internal cross-references and removes or replaces obsolete provisions identified during a routine review of the Texas permitting regulations. The second revision, adopted on June 9, 2021, submitted July 9, 2021, repeals obsolete permitting provisions, and makes necessary corresponding edits to other permitting provisions. The third revision, adopted on August 25, 2021, submitted January 21, 2022, enhances the public notice requirements of the air permitting program. As detailed in our proposed approval, we found that the submitted revisions are consistent with the CAA and the EPA's regulations, policy, and guidance for permitting SIP requirements. We did not receive any comments regarding our proposal. Therefore, we are finalizing as proposed.

## II. Final Action

Pursuant to section 110, of the Act, we are finalizing the submitted revisions to the Texas SIP that update the air permitting program by removing obsolete provisions and enhancing public notice by extending requirements for alternative language notices to notices for public meetings in certain circumstances.

We are approving the following revisions adopted on June 9, 2021, effective on July 1, 2021, submitted to the EPA on July 9, 2021:

- Revisions to 30 TAC Section 116.910—Applicability,
- Revisions to 30 TAC Section 116.911—Electric Generating Facility Permit Application,
- Revisions to 30 TAC Sections 116.920—Public Participation for Initial Issuance,
- Revisions to 30 TAC Sections 116.1530—Best Available Retrofit Technology (BART) Control Implementation, and
- Repeal of 30 TAC Sections 116.770—116.772, 116.774, 116.775, 116.777—116.781, 116.783, 116.785—116.788, and 116.790.

The EPA is approving the following revisions adopted on April 22, 2020, effective on May 14, 2020, submitted to the EPA on January 21, 2022:

- Revisions to 30 TAC Section 39.405—General Notice Provisions,
- Revisions to 30 TAC Section 39.411—Text of Public Notice,
- Revisions to 30 TAC Section 39.419—Notice of Application and Preliminary Decision,
- Revisions to 30 TAC Section 39.420—Transmittal of the Executive Director's Response to Comments and Decision,
- Revisions to 30 TAC Section 39.601—Applicability,
- Revisions to 30 TAC Section 39.603—Newspaper Notice,
- Revisions to 30 TAC Section 55.154—Public Meetings,
- Revisions to 30 TAC Section 55.156—Public Comment Processing,
- Revisions to 30 TAC Section 101.306—Emission Credit Use,
- Revisions to 30 TAC Section 116.111—General Application, and
- Revisions to 30 TAC Section 116.112—Distance Limitations.

The EPA is approving the following revisions adopted on August 25, 2021, effective September 16, 2021, submitted to the EPA on January 21, 2022:

- Revisions to 30 TAC Section 39.405—General Notice Provisions,
- Revisions to 30 TAC Section 39.412—Combined Notice for Certain Greenhouse Gases Permit Applications,
- Revisions to 30 TAC Section 39.418—Notice of Receipt of Application and Intent to Obtain Permit,
- Revisions to 30 TAC Section 39.419—Notice of Application and Preliminary Decision,
- New 30 TAC Section 39.426—Alternative Language Requirements,
- Revisions to 30 TAC Section 39.602—Mailed Notice,
- Revisions to 30 TAC Section 39.604—Sign-Posting,
- Revisions to 30 TAC Sections 55.154—Public Meetings, and
- Revisions to 30 TAC Sections 55.156—Public Comment Processing.

The EPA is also correcting several errors identified in the amendatory language for the Texas SIP at 40 CFR 52.2270(c). The EPA is making these necessary, ministerial edits to the Texas SIP without notice and comment under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the ministerial corrections update the amendatory language at 40 CFR 52.2270(c) to correctly reference prior EPA actions that were previously subject to notice and comment consistent with section 553 of the APA. The public benefits by having these updated citations.

- The EPA's January 11, 2011, final rule at 76 FR 1525, 1531–1532, inadvertently used the wrong section names in the Title/Subject field for several of the section numbers that were approved into the Texas SIP. We are correcting the Title/Subject field for 30 TAC Sections 116.911, 116.912, 116.916, 116.917, 116.918, 116.920, 116.930.
- The EPA's February 13, 2020, final rule at 85 FR 8185, 8188, inadvertently omitted the information identifying the EPA's approval date from the SIP-approved sections for 30 TAC Sections 116.164, 116.196, 116.198, 116.310, 116.611, and 116.615. We are correcting these sections to include the EPA approval date and FR citation.

## III. Environmental Justice Consideration

The EPA reviewed demographic data and provided the results in our April 21, 2023, proposed rule. See 88 FR 24518, 24520–24521.

## IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference revisions to the Texas regulations as described in Section II of this preamble, Final Action. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated in the next update to the SIP compilation.

## V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The state air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 23, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 15, 2023.

**Earthea Nance,**

*Regional Administrator, Region 6.*

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

## Subpart SS—Texas

■ 2. In § 52.2270, the table in paragraph (c) titled ''EPA Approved Regulations in the Texas SIP'' is amended by

■ i. Revising the entries for sections 39.405, 39.411, 39.412, 39.418, 39.419, 39.420, 39.426, 39.601, 39.602, 39.603, 39.604, 55.154, 55.156, 101.306, 116.111, 116.112, 116.164, 116.196, 116.198, 116.310, 116.615, 116.910, 116.911, 116.912, 116.920, and 116.1530, and

■ ii. Removing the heading ''Subchapter H—Permits for Grandfathered Facilities'' and sub-heading ''Division 1—General Applicability'', consisting of entries for sections 116.770—116.772 and sub-heading ''Division 2—Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits'', consisting of entries for sections 116.774, 116.775, 116.777–116.781, 116.783, 116.785–116.788, and 116.790.

The revisions read as follows:

**§ 52.2270 Identification of plan.**

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

| State citation | Title/subject | State approval/ submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| **Chapter 39—Public Notice Subchapter H—Applicability and General Provisions** | | | | |
| * | * | * | * | * |
| Section 39.405 | General Notice Provisions | 8/25/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| * | * | * | * | * |
| Section 39.411 | Text of Public Notice | 4/22/2020 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 39.412 | Combined Notice for Certain Greenhouse Gases Permit Applications. | 8/25/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 39.418 | Notice of Receipt of Application and Intent to Obtain Permit. | 8/25/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 39.419 | Notice of Application and Preliminary Decision. | 8/25/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 39.420 | Transmittal of the Executive Director's Response to Comments and Decisions. | 4/22/2020 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 39.426 | Alternative Language Requirements | 8/25/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| **Subchapter K—Public Notice of Air Quality Permit Applications** | | | | |
| Section 39.601 | Applicability | 4/22/2020 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 39.602 | Mailed Notice | 8/25/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 39.603 | Newspaper Notice | 4/22/2020 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 39.604 | Sign-Posting | 8/25/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| * | * | * | * | * |
| **Chapter 55—Requests for Reconsideration and Contested Case Hearings; Public Comment Subchapter E—Public Comment and Public Meetings** | | | | |
| * | * | * | * | * |
| Section 55.154 | Public Meetings | 8/25/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 55.156 | Public Comment Processing | 8/25/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| **Chapter 101—General Air Quality Rules** | | | | |
| * | * | * | * | * |
| **Subchapter H—Emissions Banking and Trading Division 1—Emission Credit Program** | | | | |
| * | * | * | * | * |
| Section 101.306 | Emission Credit Use | 4/22/2020 | 8/24/2023, [Insert **Federal Register** citation]. | |
| * | * | * | * | * |
| **Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification** | | | | |
| * | * | * | * | * |
| **Subchapter B—New Source Review Permits Division 1—Permit Application** | | | | |

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

| State citation | Title/subject | State approval/ submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * * | * | * * | * * |
| Section 116.111 .... | General Application ..... | 4/22/2020 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 116.112 .... | Distance Limitations ..... | 4/22/2020 | 8/24/2023, [Insert **Federal Register** citation]. | |
| * | * * | * | * * | * * |
| **Division 6—Prevention of Significant Deterioration Review** | | | | |
| * | * * | * | * * | * * |
| Section 116.164 .... | Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources. | 10/31/2018 | 2/13/2020, 85 FR 8187 ..... | The PSD SIP does NOT include 30 TAC Section 116.164(b). |
| * | * * | * | * * | * * |
| **Subchapter C—Plant-wide Applicability Limits Division 1—Plant-wide Applicability Limits** | | | | |
| * | * * | * | * * | * * |
| Section 116.196 .... | Renewal of a Plant-wide Applicability Limit Permit. | 10/31/2018 | 2/13/2020, 85 FR 8187. | |
| Section 116.198 .... | Expiration of Voidance ..... | 10/31/2018 | 2/13/2020, 85 FR 8187. | |
| **Subchapter D—Permit Renewals** | | | | |
| Section 116.310 .... | Notification of Permit Holder ..... | 10/31/2018 | 2/13/2020, 85 FR 8187. | |
| * | * * | * | * * | * * |
| **Subchapter F—Standard Permits** | | | | |
| * | * * | * | * * | * * |
| Section 116.611 .... | Registration to Use a Standard Permit .... | 10/31/2018 | 2/13/2020, 85 FR 8187 ..... | 30 TAC Section 116.611(b) is SIP-approved as adopted by the State as of 11/20/2002. The SIP does NOT include 30 TAC Section 116.611(c)(3), (c)(3)(A), and (c)(3)(B). |
| * | * * | * | * * | * * |
| Section 116.615 .... | General Conditions ..... | 10/31/2018 | 2/13/2020, 85 FR 8187. | |
| * | * * | * | * * | * * |
| **Subchapter G—Flexible Permits** | | | | |
| * | * * | * | * * | * * |
| Section 116.765 .... | Compliance Schedule ..... | 7/31/2014 | 7/20/2015, 80 FR 42729 ..... | SIP includes 30 TAC Section 116.765(b) and (c) |
| * | * * | * | * * | * * |
| **Subchapter I—Electric Generating Facility Permits** | | | | |
| Section 116.910 .... | Applicability ..... | 6/9/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| Section 116.911 .... | Electric Generating Facility Permit Application. | 6/9/2021 | 8/24/2023, [Insert **Federal Register** citation]. | Section 116.911(a)(2) is authorized for Minor NSR only. |
| Section 116.912 .... | Electing Electric Generating Facilities ..... | 12/16/1999 | 1/11/2011, 76 FR 1525. | |
| * | * * | * | * * | * * |
| Section 116.916 .... | Permits for Grandfathered and Electing Electric Generating Facilities in El Paso County. | 12/16/1999 | 1/1/2011, 76 FR 1525. | |
| Section 116.917 .... | Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites. | 5/22/2002 | 1/11/2011, 76 FR 1525. | |
| Section 116.918 .... | Additional General and Special Conditions for Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites. | 5/22/2002 | 1/11/2011, 76 FR 1525. | |

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

| State citation | Title/subject | State approval/ submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| Section 116.920 .... | Public Participation for Initial Issuance .... | 6/9/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| * | * | * | * | * |
| Section 116.930 .... | Amendments and Alterations of Permits Issued Under this Subchapter. | 5/22/2002 | 1/11/2011, 76 FR 1525. | |
| * | * | * | * | * |
| **Subchapter M—Best Available Retrofit Technology (BART)** | | | | |
| * | * | * | * | * |
| Section 116.1530 .. | Best Available Retrofit Technology (BART) Control Implementation. | 6/9/2021 | 8/24/2023, [Insert **Federal Register** citation]. | |
| * | * | * | * | * |

[FR Doc. 2023–17945 Filed 8–23–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2020–0004; FRL–11246–01–OCSPP]**

## Pyraclonil; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of pyraclonil in or on rice, grain. Nichino America, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective August 24, 2023. Objections and requests for hearings must be received on or before October 23, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0004, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Charles Smith, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0004 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 23, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of Administrative Law Judges encourages parties to file electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0004, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically

any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 3, 2020 (85 FR 12454) (FRL–10005–58), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F8809) by Nichino America, Inc., 4550 Linden Hill Road, Suite 501, Wilmington, DE 19808. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide pyraclonil, 1-(3-chloro-4,5,6,7-tetrahydropyrazolo[1,5-*a*]pyridin-2-yl)-5-[methyl(prop-2-ynyl)amino]pyrazole-4-carbonitrile, in or on rice, grain at 0.01 parts per million (ppm). That document referenced a summary of the petition prepared by Nichino America, Inc., the registrant, which is available in the docket *https://www.regulations.gov.* Three comments supporting the registration were improperly filed in the docket for the notice of filing (NOF); there were no comments on the tolerance action.

Based upon review of the data supporting the petition, EPA has recommended changes to the tolerance expression. The reason for these changes is explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for pyraclonil including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pyraclonil follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The target organs of pyraclonil are the liver and the thyroid. Liver effects were found to be primarily adaptive (increased weight, hepatocellular hypertrophy, induction of cytochrome P450); however, female mice showed adverse liver effects (clinical chemistry changes, increased liver weight, and fat deposits after 90 days of oral exposure; these initial changes progressed to cellular alteration, liver masses, and hepatocellular adenomas after 78 weeks of oral exposure). Thyroid effects occurred in rats at similar doses across the database via oral exposures (lowest observed adverse effect levels (LOAELs) range from 74 to 207 mg/kg/day). Thyroid follicular cell hypertrophy was observed in both sexes of rats in several studies, after 14 or more days of oral exposure. Colloid degeneration was observed in both sexes, and thyroid follicular cell adenomas were observed in males in a chronic study. Increased blood levels of thyroid stimulating hormone (TSH) and decreased levels of thyroxine (T4) were detected after 1, 2, 52, and 104 weeks of oral exposure (hormones only measured in one 14-day oral study and one chronic study), in either or both sexes. No thyroid effects were detected in mice or dogs.

No reproductive effects were detected. No increased pre- or postnatal susceptibility was detected. Pup weights were decreased in the rat reproductive study at the same dietary concentration at which thyroid effects were observed in adults. Decreased fetal weights were seen in a rat developmental study at the same dose as maternal clinical signs and decreased body weight. In an acute neurotoxicity study, decreased motor activity and several functional observation battery (FOB) findings (tremors, hunchback posture and slight lacrimation; decreased alertness, exploration, approach response and landing foot splay; and decreased body temperature) were noted only at 2 hours post-dosing with a single dose of 400 mg/kg in females, and at higher doses in males. There was no effect of treatment on neurological parameters measured in a 90-day repeat dose studies in the rat.

Pyraclonil is classified as ''Likely to be Carcinogenic to Humans'', based on treatment-related hepatocellular tumors in female mice (adenomas and combined adenomas/carcinomas), and thyroid follicular cell tumors in male rat (adenomas and combined adenomas/carcinomas). The unit risk, Q1* $(mg/kg/day)^{-1}$ of pyraclonil based upon female mouse liver tumor rates is $1.08 \times 10^{-2}$ in human equivalents.

Specific information on the studies received and the nature of the adverse effects caused by pyraclonil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *https://www.regulations.gov* in document Pyraclonil. Human Health Risk Assessment for the New Active Ingredient for use on Rice at 11–14 in docket ID number EPA–HQ–OPP–2020–0004.

### *B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin

of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for pyraclonil used for human risk assessment can be found on pages 18–20 in the Pyraclonil Human Health Risk Assessment.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to pyraclonil, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from pyraclonil in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for pyraclonil. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2005–2010 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA conducted an unrefined acute dietary exposure assessment for the proposed new use on rice and assumed 100 percent crop treated (PCT), tolerance-level residues and default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2005–2010 NHANES/WWEIA. As to residue levels in food, EPA conducted an unrefined chronic dietary exposure assessment for the proposed new use on rice and assumed 100 PCT, tolerance-level residues and default processing factors.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that pyraclonil should be classified as ''Likely to be Carcinogenic to Humans'' and a linear approach has been used to quantify cancer risk. The inputs for the cancer dietary exposure assessment and the chronic dietary exposure assessment were equivalent with the exception of the estimated drinking water concentrations (EDWC) used. Applying the Q1* of $1.08 \times 10^{-2}$ $(mg/kg/day)^{-1}$ to the exposure value (0.000136 mg/kg/day) results in a cancer risk estimate of $1 \times 10^{-6}$ for adults 20 to 49 years old.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for pyraclonil. Tolerance level residues and/or 100PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for pyraclonil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyraclonil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/models-pesticide-risk-assessment.*

Based on the Pesticides in Flooded Application Model (PFAM version 2.0), the maximum EDWCs of 50.8 µg/L for the 1-in-10-year daily mean, 6.68 µg/L for the 1-in-10-year annual mean, and 6.40 µg/L for the 30-year annual mean concentration in surface water were used in the acute, chronic, and cancer analyses, respectively.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Pyraclonil is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found pyraclonil to share a common mechanism of toxicity with any other substances, and pyraclonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyraclonil does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No increased pre- or postnatal susceptibility was detected in developmental studies in rats or rabbits, or in a reproductive study in rats.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for pyraclonil is complete.

ii. Potential evidence of neurotoxicity was observed in the pyraclonil acute neurotoxicity study; however, concern is low since a clear NOAEL was established and the selected endpoints are protective of the observed effects.

iii. There is no evidence that pyraclonil results in increased susceptibility *in utero* rats or rabbits in the prenatal developmental studies or in

young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT, tolerance-level residues and default processing factors. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pyraclonil in drinking water. These assessments will not underestimate the exposure and risks posed by pyraclonil.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to pyraclonil will occupy <1% of the aPAD for all infants <1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyraclonil from food and water will utilize <1% of the cPAD for all infants <1 year old, the population group receiving the greatest exposure. There are no residential uses for pyraclonil.

3. *Short-term and Intermediate-term risk.* Short-term and Intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short-term and intermediate-term adverse effect was identified; however, pyraclonil is not registered for any use patterns that would result in short-term or intermediate-term residential exposure. Short-term or intermediate-term risk is assessed based on short-term or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short-term or intermediate-term residential exposure, and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term and intermediate-term risk), no further assessment of short-term or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term and intermediate-term risk for pyraclonil.

4. *Aggregate cancer risk for U.S. population.* The estimated exposure of adults 20 to 49 years old (the most highly exposed adult subpopulation) to pyraclonil is 0.000136 mg/kg/day. Applying the Q1* of $1.08 \times 10^{-2}$ (mg/kg/day)$^{-1}$ to the exposure value results in a cancer risk estimate of $1 \times 10^{-6}$ for adults 20 to 49 years old. EPA generally considers cancer risks (expressed as the probability of an increased cancer case) in the range of 1 in 1 million (or $\times 10^{-6}$) or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the logarithmic scale; for example, risks falling between $3 \times 10^{-7}$ and $3 \times 10^{-6}$ are expressed as risks in the range of $10^{-6}$. This is particularly the case where some conservatism is maintained in the exposure assessment. The pyraclonil exposure assessment is unrefined and retains significant conservatism in that tolerance-level residues and 100 percent crop treated is assumed for the rice use. In addition, EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pyraclonil in drinking water. These assessments will not underestimate the exposure posed by pyraclonil. Accordingly, EPA has concluded the aggregate cancer risk for all existing pyraclonil uses and the new uses in this action fall within the range of $1 \times 10^{-6}$ and are thus negligible.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyraclonil residues.

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology such as high-performance liquid chromatography method with tandem mass spectrometry detection (LC/MS/MS), Method GLP–MTH–108, is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for pyraclonil.

*C. Revisions to Petitioned-For Tolerances*

The Agency is establishing a tolerance for residues of pyraclonil expressed as: (1-(3-chloro-4,5,6,7-tetrahydropyrazolo[1,5-*a*]pyridin-2-yl)-5-(methyl-2-propyn-1-ylamino)-1*H*-pyrazole-4-carbonitrile), which is the CAS name, rather than the petitioned for expression of pyraclonil: 1-(3-chloro-4,5,6,7-tetrahydropyrazolo[1,5-*a*]pyridin-2-yl)-5-[methyl(prop-2-ynyl)amino]pyrazole-4-carbonitrile, which is the IUPAC name.

## V. Conclusion

Therefore, tolerances are established for residues of pyraclonil, 1-(3-chloro-4,5,6,7-tetrahydropyrazolo[1,5-*a*]pyridin-2-yl)-5-(methyl-2-propyn-1-ylamino)-1*H*-pyrazole-4-carbonitrile, in or on rice, grain at 0.01 ppm.

## VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect

Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

### VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

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

Dated: August 16, 2023.

**Edward Messina,**

*Director, Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

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

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

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

■ 2. Add § 180.725 to subpart C to read as follows:

**§ 180.725 Pyraclonil; tolerances for residues.**

(a)–(b) [Reserved]

(c) *Tolerances with regional registrations.* Tolerances are established for residues of the herbicide pyraclonil, including its metabolites and degradates, in or on the commodities to the table to this paragraph (c). Compliance with the tolerance levels specified in the table to this paragraph (c) is to be determined by measuring only pyraclonil (1-(3-chloro-4,5,6,7-tetrahydropyrazolo[1,5-*a*]pyridin-2-yl)-5-(methyl-2-propyn-1-ylamino)-1*H*-pyrazole-4-carbonitrile).

TABLE 1 TO PARAGRAPH (c)

| Commodity | Parts per million |
|---|---|
| Rice, grain | 0.01 |

(d) [Reserved]

[FR Doc. 2023–18181 Filed 8–23–23; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2022–0577; FRL–11274–01–OCSPP]**

## Imazapyr; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of imazapyr in or on rice, bran and rice, grain. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective August 24, 2023. Objections and requests for hearings must be received on or before October 23, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0577, is available at *https://www.regulations.gov* or in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the **Federal Register** Office's e-CFR site at *https://www.ecfr.gov/current/title-40.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0577 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 23, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0577, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 23, 2022 (87 FR 58047) (FRL–9410–05–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E9009) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR 180.500 be amended by establishing tolerances for residues of the herbicide imazapyr, (2-[4,5-dihydro- 4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid), in or on rice, bran at 0.2 parts per million (ppm) and rice, grain at 0.06 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing one tolerance at a different level than requested by the registrant. The reason for these changes are explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for imazapyr including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with imazapyr follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

No hazard was identified for imazapyr in the toxicity database, *i.e.,* no toxicity was demonstrated in acceptable guideline studies generally up to the highest doses tested of 250–1,000 mg/kg/day. The data also show that there is no evidence of neurotoxicity, immunotoxicity, genotoxicity, or carcinogenicity. Further, no adverse developmental effects or adverse reproductive effects were detected in well-conducted guideline studies. Therefore, EPA concluded that dietary, occupational, and residential exposures to imazapyr do not pose a significant human health risk. Although there is potential for exposure to imazapyr, no hazard was identified from the well-conducted toxicity studies. No adverse effects were observed in the submitted toxicological studies regardless of the route of exposure or the species tested. Therefore, risk assessments are not required. Furthermore, the toxicology database is considered to be adequate, and no additional studies are required.

Specific information on the studies received and the nature of the adverse effects caused by imazapyr as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *https://www.regulations.gov* in document titled ''Imazapyr Human Health Risks Assessment for the Establishment of Permanent Tolerances for Residues in/on Rice'' (hereinafter ''Imazapyr Human Health Risk Assessment'') on pages 12–15 in docket ID number EPA–HQ–OPP–2022–0577.

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment.

PODs are developed based on a careful analysis of the doses in each toxicological study to determine the the NOAEL and the the LOAEL. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

Since no effects were seen in any guideline toxicity studies at doses relevant for human health risk assessment, no toxicological points of departure (PODs) were selected for imazapyr.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to imazapyr, EPA considered exposure under the petitioned-for tolerances as well as all existing imazapyr tolerances in 40 CFR 180.500. There is likely to be dietary exposure to imazapyr from its registered uses as a pesticide on domestic crops. Should exposure occur, however, minimal to no risk is expected for the general U.S population, including infants and children, due to the low toxicity of imazapyr.

2. *Dietary exposure from drinking water.* While there is no additional exposure expected from imazapyr tolerances for rice because it is for import only, there is likely to be dietary exposure to imazapyr in drinking water from its registered uses as a pesticide on domestic crops. Should exposure occur, however, minimal to no risk is expected for the general U.S population, including infants and children, due to the low toxicity of imazapyr.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Imazapyr is currently registered in the United States for application in/around the home (homeowner application permitted) and to noncropland areas, aquatic sites, grasslands, and imidazolinone-tolerant field corn. Due to the low toxicity of imazapyr, quantitative exposure assessments are not required. Residential exposure to imazapyr is not expected to increase with this tolerance because these tolerances are for import only. EPA concludes with reasonable certainty that non-occupational exposures to imazapyr do not pose a significant human health risk.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to imazapyr and any other substances. For the purposes of this action, therefore, EPA has not assumed that imazapyr has a common mechanism of toxicity with other substances. Further information regarding EPA Pesticide Commulative Risk Assessment can be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/pesticide-cumulative-risk-assessment-framework.*

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Agency Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Conclusion.* No hazard was identified from the toxicity studies. No adverse effects were observed in the submitted toxicological studies regardless of the route of exposure or the species tested. The toxicology database for imazapyr is considered to be adequate. No additional toxicological studies are required, and no additional safety factors to protect children are needed and EPA is not retaining the 10X safety factor.

*E. Determination of Safety*

Taking into account the available data for imazapyr, EPA has concluded that given the lack of toxicity of this substance, no risks of concern are expected. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to imazapyr.

**IV. Other Considerations**

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (high-performance liquid chromatography with tandem mass spectroscopy (LC/MS/MS), method SOP–PA.0288) is available for tolerance enforcement.

*The method may be requested from:* Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The Codex has not established a MRL for imazapyr in or on rice.

*C. Revisions to Petitioned-For Tolerances*

EPA is establishing the tolerance for rice, bran at 0.15 ppm rather than at 0.2 ppm as requested by the petitioner. The rice, bran tolerance is based on the highest average field trial residue (0.031 ppm) and the median rice bran processing factor of 3.2x. (0.031 ppm × 3.2 = 0.099 ppm). The tolerance is being established at 0.15 ppm because that is the rounding class after 0.1 ppm. For the rice grain tolerance of 0.06 ppm, EPA used the Organization for Economic Co-operation and Development (OECD) maximum residue limit (MRL) calculation procedures.

**V. Conclusion**

Therefore, tolerances are established for residues of imazapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-pyridinecarboxylic acid), in or on rice, bran at 0.15 ppm and rice, grain at 0.06 ppm.

### VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal Governments, on the relationship between the National Government and the States or tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

### VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

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

Dated: August 18, 2023.

**Charles Smith,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

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

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

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

■ 2. In § 180.500, amend the table in paragraph (a) by:

■ a. Adding a heading for the table;

■ b. Adding in alphabetical order the entries ''Rice, bran'' and ''Rice, grain''; and

■ c. Revising footnote 1.

The additions and revision read as follows:

**§ 180.500 Imazapyr; tolerances for residues.**

(a) * * *

TABLE 1 TO PARAGRAPH (a)

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Rice, bran [1] | 0.15 |
| Rice, grain [1] | 0.06 |

TABLE 1 TO PARAGRAPH (a)—Continued

| Commodity | Parts per million |
|---|---|
| * * * * * | |

[1] There are no U.S. registrations as of August 24, 2023.

* * * * *

[FR Doc. 2023–18222 Filed 8–23–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2022–0502; FRL–11272–01–OCSPP]**

### Trifluralin; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of trifluralin in or on tea, dried and tea, instant. Gowan Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective August 24, 2023. Objections and requests for hearings must be received on or before October 23, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0502, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

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

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

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40*.

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0502 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 23, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0502, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 20, 2022 (87 FR 43231) (FRL–9410–03–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8999) by Gowan Company, P.O. Box 5569, Yuma, AZ 85366. The petition requested that 40 CFR 180.207 be amended by establishing a tolerance for residues of the herbicide trifluralin in or on tea at 0.05 parts per million (ppm). That document referenced a summary of the petition prepared by Gowan Company, which is available in the docket at *https://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing tolerances for tea, dried and tea, instant. For details, see Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for trifluralin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with trifluralin follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published tolerance rulemakings for trifluralin in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to trifluralin and established tolerances for residues of that chemical. EPA is incorporating previously published sections from these rulemakings as described further in this rulemaking, as they remain unchanged.

*Toxicological profile.* For a discussion of the toxicological profile of trifluralin, see Unit III.A. of the trifluralin tolerance rulemaking published in the **Federal Register** of February 15, 2019 (84 FR 4345) (FRL–9983–89).

*Toxicological points of departure/levels of concern.* A summary of the toxicological endpoints for trifluralin used for human health risk assessment is discussed in Unit III.B. of the trifluralin tolerance rulemaking published in the **Federal Register** of July 31, 2013 (78 FR 46267) (FRL–9393–5). EPA notes that the unit of measurement for the no-observed-adverse-effect level (NOAEL) in the inhalation short-term (1 to 30 days) exposure/scenario should be $mg/m^3$, not mg/kg/day as presented (*i.e.,* the inhalation study NOAEL = 300 $mg/m^3$). The unit of measurement for the lowest-observed-adverse-effect level (LOAEL) is

correct as presented (*i.e.,* LOAEL = 1000 mg/m$^3$).

*Exposure assessment.* EPA's dietary exposure assessments have been updated to include the additional exposure from the requested tolerance for residues of trifluralin on tea and were conducted with the Dietary Exposure Evaluation Model with the Food Commodity Intake Database (DEEM–FCID, ver. 4.02), which incorporates food consumption data from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA; 2005–2010). The unrefined acute dietary exposure and risk assessment assumed 100 percent crop treated (PCT) for all commodities. The partially refined chronic and cancer dietary exposure and risk assessments incorporated average PCT estimates. As to residue levels in food, the chronic and cancer exposure assessments incorporated tolerance-level residues for the majority of commodities, average screening level usage analysis (SLUA) PCT estimates, EPA's default processing factors, and monitoring data from the USDA's Pesticide Data Program (PDP) for a subset of risk driving commodities that significantly reduced the cancer dietary exposure estimates. Dietary exposure estimates for the established uses and requested tolerance are below EPA's level of concern for the general population and all population subgroups.

*Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require, pursuant to FFDCA section 408(f)(1), that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

For the chronic dietary assessment, the following PCT assumptions were made: asparagus 15%; barley 1%; beans, green 25%; broccoli 10%; cabbage 35%; canola 2.5%; cantaloupes 25%; carrots 15%; cauliflower 5%; celery 2.5%; corn 1%; cotton 25%; cucumbers 5%; dry beans/peas 10%; honeydews 30%; onions 1%; peaches 1%; peanuts 2.5%; peas, green 10%; pecans 1%; peppers 20%; potatoes 2.5%; pumpkins 2.5%; sorghum 1%; soybeans 2.5%; squash 2.5%; sugar beets 1%; sunflowers 5%; tomatoes 50%; and watermelons 15%. EPA assumed 100 PCT for the other commodities including tea. In the acute analysis, the Agency made the conservative assumption of 100 PCT.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use 1% or 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in this section have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations are taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimates do not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which trifluralin may be applied in a particular area.

*Drinking water and non-occupational exposures.* Because there are no registrations for use of trifluralin on tea in the United States associated with the requested tolerance, the estimated drinking water concentrations and residential exposure assessment have not changed. For a detailed summary of the drinking water analysis and residential exposure assessment for trifluralin used for the human health risk assessment, see Unit III.B. and C. of the February 15, 2019, trifluralin tolerance rulemaking.

*Cumulative exposure.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on a review of the toxicological database for trifluralin and the other dinitroanilines (benfluralin, butralin, ethalfluralin, fluazinam, flumetralin, oryzalin, pendimethalin, and prodiamine), the Agency has determined that although trifluralin shares some chemical and/or toxicological characteristics (*e.g.,* chemical structure or apical endpoint) with these other dinitroanilines, the toxicological database does not support a testable hypothesis for a common mechanism of action. No further data are required to determine that no common mechanism of toxicity exists for trifluralin and the other dinitroanilines and no further

cumulative evaluation is necessary for trifluralin. For additional details, refer to the document titled ''Dinitroanilines: Screening Analysis of Toxicological Profiles to Consider Whether a Candidate Common Mechanism Group Can Be Established'' in docket ID number EPA–HQ–OPP–2017–0420 at *https://www.regulations.gov*.

*Safety factor for infants and children.* EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.B. of the February 15, 2019, trifluralin tolerance rulemaking for a discussion of the Agency's rationale for that determination.

*Aggregate risks and Determination of safety.* EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the acute population-adjusted dose (aPAD) and chronic population-adjusted dose (cPAD). Short-, intermediate-, and chronic-term aggregate risks are evaluated by comparing the estimated total food, water, and residential exposure to the appropriate points of departures to ensure that an adequate margin of exposure (MOE) exists.

Acute dietary (food and drinking water) risks are below the Agency's level of concern of 100% of the aPAD; they are <1% of the aPAD for females 13 to 49 years old, the only population group of concern. Chronic dietary (food and drinking water) risks are below the Agency's level of concern of 100% of the cPAD; they are 5.6% of the cPAD for all infants <1 year old, the population group receiving the greatest exposure. EPA's short-term aggregate exposure to trifluralin is based on residential and dietary routes of exposure. The short-term aggregate MOEs are 24,000 for adults and 15,000 for children 1 to less than 2 years old and are not of concern (*i.e.,* the MOEs are > the LOC of 100). Trifluralin is not registered for any use patterns that would result in intermediate-term residential exposure, so intermediate-term aggregate risk is the same as the chronic dietary risk and is not of concern.

A cancer aggregate assessment was conducted for trifluralin since it is classified as a ''Group C, Possible Human Carcinogen'' with a $Q_1$* of 2.96 $\times 10^{-3}$ $(mg/kg/day)^{-1}$ based upon male rat thyroid follicular cell combined adenoma, papillary adenoma, cystadenoma, and carcinoma tumor rate in human equivalents. The cancer aggregate risk assessment combines food and drinking water exposures with the residential dermal and inhalation exposure from post-application exposure from treated gardens. The resulting aggregate cancer risk estimate is $1.5 \times 10^{-6}$.

EPA generally considers cancer risks (expressed as the probability of an increased cancer case) in the range of 1 in 1 million (or $1 \times 10^{-6}$) or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the logarithmic scale; for example, risks falling between $3 \times 10^{-7}$ and $3 \times 10^{-6}$ are expressed as risks in the range of $10^{-6}$. Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above, cancer risk should generally not be assumed to exceed the benchmark level of concern of the range of $10^{-6}$ until the calculated risk exceeds approximately $3 \times 10^{-6}$. This is particularly the case where some conservatism is maintained in the exposure assessment. EPA has concluded the cancer risk for all existing trifluralin uses and the uses associated with the tolerances established in this action fall within the range of $1 \times 10^{-6}$ and are thus not of concern.

Therefore, based on the risk assessments and information described above, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to trifluralin residues. More detailed information on this action can be found in the document titled ''Trifluralin. Human Health Risk Assessment for a Section 3 Tolerance without U.S. Registration on Imported Tea'' in docket ID EPA–HQ–OPP–2022–0502.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methods, Methods GRM 96.12 and GRM 96.13 for plant commodities, are available for trifluralin and utilize gas chromatography (GC) with electron capture detection (ECD). The reported limit of quantitation (LOQ) is 0.01 ppm.

Trifluralin was evaluated using the Food and Drug Administration (FDA) multiresidue method, which is also suitable for enforcement in determining residues of trifluralin in plant commodities.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex has not established MRLs for trifluralin on tea commodities.

### *C. Revisions to Petitioned-For Tolerance*

The petition requested a tolerance for residues of trifluralin in or on tea at 0.05 ppm. Because residue data was provided for a processed tea commodity rather than the raw agricultural commodity (*i.e.,* tea, plucked leaves), EPA is establishing tolerances at 0.05 ppm on all of the processed tea commodities (*i.e.,* tea, dried and tea, instant).

## V. Conclusion

Therefore, tolerances are established for residues of trifluralin, 2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)benzenamine, in or on tea, dried and tea, instant at 0.05 ppm.

## VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

### VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

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

Dated: August 14, 2023.

**Charles Smith,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

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

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

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

■ 2. In § 180.207, amend paragraph (a) by designating the table as table 1 and adding in alphabetical order in newly designated table 1 to paragraph (a) the entries ''Tea, dried [1]'' and ''Tea, instant [1]'' and footnote 1 following the table to read as follows:

**§ 180.207 Trifluralin; tolerances for residues.**

(a) * * *

TABLE 1 TO PARAGRAPH (a)

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Tea, dried [1] | 0.05 |
| Tea, instant [1] | 0.05 |
| * * * * * | |

[1] There are no U.S. registrations as of August 24, 2023.

* * * * *

[FR Doc. 2023–18180 Filed 8–23–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2022–0797; FRL–10971–01–OCSPP]**

## Aspergillus flavus strain TC16F, TC35C, TC38B, and TC46G; Amendment to Temporary Exemptions From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation amends the existing temporary tolerance exemptions for residues of Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G by establishing permanent tolerance exemptions for use in or on all food and feed commodities of field corn, popcorn, and sweet corn. Interregional Research Project Number 4 (IR–4) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting to amend the existing temporary tolerance exemptions for Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G. This regulation eliminates the need to establish a maximum permissible level for residues of Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G under FFDCA when used in accordance with label directions and good agricultural practices.

**DATES:** This regulation is effective August 24, 2023. Objections and requests for hearings must be received on or before October 23, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0797, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Madison Le, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1400; email address: *BPPDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

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

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0797 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 23, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although EPA strongly encourages those interested in submitting objections or a hearing request to submit objections and hearing requests electronically. See Order Urging Electronic Service and Filing (April 10, 2020), *https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.* At this time, because of the COVID–19 pandemic, the judges and staff of the Office of Administrative Law Judges are working remotely and not able to accept filings or correspondence by courier, personal delivery, or commercial delivery, and the ability to receive filings or correspondence by U.S. Mail is similarly limited. When submitting documents to the U.S. EPA Office of Administrative Law Judges (OALJ), a person should utilize the OALJ e-filing system at *https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf.*

Although EPA's regulations require submission via U.S. Mail or hand delivery, EPA intends to treat submissions filed via electronic means as properly filed submissions during this time that the Agency continues to maximize telework due to the pandemic; therefore, EPA believes the preference for submission via electronic means will not be prejudicial. If it is impossible for a person to submit documents electronically or receive service electronically, *e.g.,* the person does not have any access to a computer, the person shall so advise OALJ by contacting the Hearing Clerk at (202) 564–6281. If a person is without access to a computer and must file documents by U.S. Mail, the person shall notify the Hearing Clerk every time it files a document in such a manner. The address for mailing documents is U.S. Environmental Protection Agency, Office of Administrative Law Judges, Mail Code 1900R, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0797, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

## II. Background

In the **Federal Register** of February 23, 2023 (88 FR 11401) (FRL–10579–01), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 1E8975) by IR–4, North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 27606, on behalf of the Texas Corn Producers Board, 4205 N Interstate 27, Lubbock, Texas 79403. The petition requested that 40 CFR 180.1338 be amended to establish an amendment of the existing temporary tolerance exemptions for the microbial pesticides *Aspergillus flavus* strains TC16F, TC35C, TC38B, and TC46G in or on all food and feed commodities of field corn, popcorn, and sweet corn. That notice referenced a summary of the petition prepared by the petitioner IR–4 and available in the docket via *https://www.regulations.gov.* EPA received no comments in response to the notice of filing.

EPA modified language from the requested tolerance exemption and changed ''exemption'' to ''exemptions'' in the amended tolerance exemption expression. The reason for this change is explained in Unit III.C.

## III. Final Rule

*A. EPA's Safety Determination*

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicological and exposure data on Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Human Health Risk Assessment of Aspergillus flavus strain TC16F, Aspergillus flavus strain TC35C, Aspergillus flavus strain TC38B, and Aspergillus flavus strain TC46G, New Active Ingredients, in FourSure

Proposed for Registration and an Associated Petition Requesting a Tolerance Exemption'' (Human Health Risk Assessment of Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The toxicological profiles of Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G were previously described in the ''Review of Product Identity, Human Health Data, and Petition for a Temporary Tolerance Exemption for the IR–4 and Texas Corn Producers Board FourSure Experimental Use Permit 5E8397,'' available in docket EPA–HQ–OPP–2015–0742 and remain unchanged at this time. Based upon its evaluation, EPA concludes that, with regard to humans, Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G are not anticipated to be toxic, pathogenic, or infective via any reasonably foreseeable route of exposure. Although there is potential for dietary and non-occupational exposure to residues of Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G, there is not a concern due to the lack of potential for adverse effects. Because there are no threshold levels of concern with the toxicity, pathogenicity, or infectivity of Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G, EPA determined that no additional margin of safety is necessary to protect infants and children as part of the qualitative assessment conducted.

Based upon its evaluation in the Human Health Risk Assessment of Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G, which concludes that there are no risks of concern from aggregate exposure to Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G.

*B. Analytical Enforcement Methodology*

An analytical method is not required for *Aspergillus flavus* strains TC16F, TC35C, TC38B, and TC46G because EPA is amending temporary exemptions from the requirement of a tolerance without any numerical limitations.

*C. Revisions to the Requested Amendment to a Tolerance Exemption*

One modification was made to the requested tolerance exemption. EPA changed ''exemption'' to ''exemptions'' as four different active ingredients are covered with this action.

*D. Conclusion*

Therefore, the existing Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G temporary tolerance exemptions are amended by establishing permanent tolerance exemptions for residues of Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G in or on all food and feed commodities of corn, field; corn, pop; and corn, sweet when used in accordance with label directions and good agricultural practices.

## IV. Statutory and Executive Order Reviews

This action amends temporary tolerance exemptions under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are amended on the basis of a petition under FFDCA section 408(d), such as the tolerance exemptions in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

## V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

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

Dated: August 16, 2023.

**Edward Messina,**

*Director, Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

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

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

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

■ 2. Revise § 180.1338 to read as follows:

### § 180.1338 *Aspergillus flavus* strains TC16F, TC35C, TC38B, and TC46G; exemptions from the requirement of a tolerance.

Exemptions from the requirement of a tolerance are established for residues of

Aspergillus flavus strains TC16F, TC35C, TC38B, and TC46G in or on all food and feed commodities of corn, field; corn, pop; and corn, sweet when used in accordance with label directions and good agricultural practices.

[FR Doc. 2023–18182 Filed 8–23–23; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Parts 405, 410, 411, 412, 413, 416, 419, 424, 485, and 489

**[CMS–1772–FC; CMS–1744–F; CMS–3419–F; CMS–5531–F; CMS–9912–F]**

**RIN 0938–AU82**

### Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Organ Acquisition; Rural Emergency Hospitals: Payment Policies, Conditions of Participation, Provider Enrollment, Physician Self-Referral; New Service Category for Hospital Outpatient Department Prior Authorization Process; Overall Hospital Quality Star Rating; COVID–19

### Correction

In rule document 2023–23918 beginning on page 71748 in the issue of November 23, 2022, make the following correction:

#### § 413.404 Corrected

On page 72288, in the first column, in amendatory instruction 23, in the seventh line ''(b)(3)(ii)(C)(1) through (3)'' should read ''(b)(3)(ii)(C)(*1*) through (*3*)''.

On page 72288, in the second column, in paragraph (b)(3)(i)(C)(*1*)(*ii*), in the second line ''(b)(3)(i)(C)(1)(i)'' should read ''(b)(3)(i)(C)(*1*)(*i*)''.

On the same page, in the same column, in paragraph (b)(3)(i)(C)(*2*)(*ii*), in the first line ''(b)(3)(i)(C)(2)(i)'' should read ''(b)(3)(i)(C)(*2*)(*i*)''.

On the same page, in the third column, in paragraph (b)(3)(i)(C)(*1*)(*ii*), ''(b)(3)(i)(C)(1)(i)'' should read ''(b)(3)(i)(C)(*1*)(*i*)''.

On the same page, in the same column, in paragraph (b)(3)(i)(C)(*2*)(*ii*), in the second line ''(b)(3)(ii)(B)(2)(i)'' should read ''(b)(3)(ii)(B)(*2*)(*i*)''.

[FR Doc. C1–2022–23918 Filed 8–23–23; 8:45 am]

BILLING CODE 1505–01–D

# Proposed Rules

Federal Register
Vol. 88, No. 163
Thursday, August 24, 2023

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–2023–1715; Project Identifier MCAI–2023–00548–T]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc., Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. This proposed AD was prompted by a report that some airplanes were delivered without a portable protective breathing equipment (PBE) device located in the forward left side cabin area of the airplane. This proposed AD would require visually inspecting the forward left side cabin area of the airplane to determine if the portable PBE device is installed and, if not installed, would require installing the portable PBE device along with the associated placard. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by October 10, 2023.

**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–2023–1715; 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 service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514 855 2999; email: *ac.yul@aero.bombardier.com;* website: *bombardier.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

**FOR FURTHER INFORMATION CONTACT:** Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1715; Project Identifier MCAI–2023–00548–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the 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 Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

### Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–21, dated March 30, 2023 (Transport Canada AD CF–2023–21) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes. The MCAI states that some airplanes were delivered without a portable PBE device located in the forward left side cabin area of the airplane. The portable PBE device is required to meet the certification standards of Transport Canada and the FAA [1] and provides protection for crew members when investigating or combatting a fire in the cabin.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1715.

[1] 14 CFR 25.1439.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Bombardier Service Bulletin 604–35–008, Revision 02, dated January 13, 2023. This service information specifies procedures for performing a general visual inspection of the forward left side cabin area of the airplane for a portable PBE device and, if missing, installing a portable PBE device and its associated placard. This service information 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**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information 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 service information already described.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 139 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 0.5 work-hour × $85 per hour = $43 | $0 | $43 | $5,977 |

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 2 work-hours × $85 per hour = $170 .... | $2,157 | $2,327 |

**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:

**Bombardier, Inc.:** Docket No. FAA–2023–1715; Project Identifier MCAI–2023–00548–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by October 10, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc., Model CL–600–2B16 (604 Variant) airplanes, certificated in any category, with serial numbers as identified in the Bombardier Service Bulletin 604–35–008, Revision 02, dated January 13, 2023.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by a report that some airplanes were delivered without a portable protective breathing equipment (PBE) device located in the forward left side cabin area of the airplane. The FAA is issuing this AD to address a missing portable PBE device. The unsafe condition, if not addressed, could result in inadequate protection for crew members when investigating or combatting a fire in the cabin.

**(f) Compliance**

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

**(g) Visual Inspection for Portable PBE**

Within 12 months from the effective date of this AD, do a general visual inspection of the forward left side cabin area of the airplane and verify if a portable PBE device, marked with Technical Standard Order (TSO) C116 or C116a, is installed and placarded, in accordance with Section 2.B. of

the Accomplishment Instructions of Bombardier Service Bulletin 604–35–008, Revision 02, dated January 13, 2023. If the PBE device is missing, before further flight, install a portable PBE device marked with TSO C116 or TSO C116a and its associated placard, in accordance with section 2.B. of the Accomplishment Instructions of Bombardier Service Bulletin 604–35–008, Revision 02, dated January 13, 2023.

**(h) Additional AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager, International Validation Branch, mail it to the address identified in paragraph (i)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(i) Additional Information**

(1) Refer to Transport Canada AD CF–2023–21, dated March 30, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1715.

(2) For more information about this AD, contact Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

**(j) Material Incorporated by Reference**

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

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

(i) Bombardier Service Bulletin 604–35–008, Revision 02, dated January 13, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier, Inc., Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email: *ac.yul@aero.bombardier.com;* website: *bombardier.com.*

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

(5) You may view this service information that is incorporated by reference 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.html.*

Issued on August 17, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–18169 Filed 8–23–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–1716; Project Identifier MCAI–2022–00168–Q]**

**RIN 2120–AA64**

## Airworthiness Directives; Thales AVS France SAS Flight Management Computer Navigation Modules

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Thales AVS France SAS (Thales) flight management computer navigation modules (FMC2 NAVM) installed on, but not limited to, airplanes. This AD was prompted by reports that, due to software issues, certain FMC2 NAVM navigation modules provide erroneous data to the flight management computer, compromising safe flight of the airplane. This proposed AD would require revising the existing aircraft flight manual (AFM) for your airplane and updating the navigation database. This proposed AD would also prohibit installing a database unless certain procedures were removed. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this NPRM by October 10, 2023.

**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–2023–1716; 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 service information identified in this NPRM, contact Thales AVS France SAS, 75–77 Avenue Marcel Dassault, 33700 Merignac, France; phone: +33 7 86 33 59 20; email: *continued.airworthiness@thalesgroup.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Rediess, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (781) 238–7159; email: *9-AVS-AIR-BACO-COS@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1716; Project Identifier MCAI–2022–00168–Q'' 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 Nicholas Rediess, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337. 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 AD 2022–0024, dated February 4, 2022 (referred to after this as ''the MCAI''), to correct an unsafe condition for Thales FMC2 NAVM, part number (P/N) C13084CA03, installed on, but not limited to Dassault (formerly Bréguet) Br.1150 Atlantique 2 (ATL2) maritime patrol airplanes. The MCAI states that Thales FMC2 NAVM, P/N C13084CA03, provides erroneous guidance for navigation procedures of the flight management system due to issues with the software. This condition, if not addressed, could compromise the safety margins of the airplane. To address the unsafe condition, the MCAI requires revising the AFM with operational instructions for the affected airborne navigation procedures of the AFM. The MCAI also requires updating the navigation database software, and prohibits installing a database for the Thales FMC2 NAVM, P/N C13084CA03, unless it does not include the procedures specified in section II of Thales Service Information Letter F9111–J70859DN–00, issued January 18, 2022 (Thales SIL F9111–J70859DN–00).

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1716.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Thales SIL F9111–J70859DN–00. This service information specifies updating the Thales FMC2 NAVM, P/N C13084CA03, navigation database.

This service information 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 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, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this AD after determining the unsafe condition is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements in This NPRM**

This proposed AD would require revising the existing AFM for your airplane and updating the navigation database. This proposed AD would also prohibit installing a database for the Thales FMC2 NAVM, P/N C13084CA03, unless it does not include the procedures specified in section II of Thales SIL F9111–J70859DN–00.

The owner/operator (pilot) holding at least a private pilot certificate may perform the proposed incorporation of the operating limitation into the existing AFM of your airplane, and the actions must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. The proposed incorporation of the operating limitation into the existing AFM of your airplane is not considered a maintenance action and may be done equally by a pilot or a mechanic. This is an exception to the FAA's standard maintenance regulations.

**Differences Between This Proposed AD and the MCAI**

The MCAI applies to all Thales FMC2 NAVMs, P/N C13084CA03, installed on, but not limited to Dassault (formerly Bréguet) Br.1150 Atlantique 2 (ATL2) maritime patrol airplanes, and this proposed AD would not apply to those airplanes because those airplanes do not have an FAA type certificate. Currently, no airplanes on the U.S. registry incorporate the navigation equipment affected by this AD.

**Costs of Compliance**

There are currently no affected airplanes on the U.S. registry with a Thales FMC2 NAVM, P/N C13084CA03, installed. In the event a U.S.-registered airplane would have this equipment installed, the following is an estimate of the costs to comply with this proposed AD.

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Revise AFM and update navigation database | 2 work-hours × $85 per hour = $170 ..... | $0 | $170 | $0 |

**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:

**Thales AVS France SAS:** Docket No. FAA–2023–1716; Project Identifier MCAI–2022–00168–Q.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by October 10, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Thales AVS France SAS flight management computer navigation modules (FMC2 NAVM), part number (P/N) C13084CA03, installed on, but not limited to airplanes, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 3400, Navigation System.

**(e) Unsafe Condition**

This AD was prompted by reports that, due to software issues, certain FMC2 NAVM navigation modules provide erroneous data to the flight management computer, compromising safe flight of the airplane. This condition, if not addressed, could compromise the safety margins of the airplane and result in controlled flight into terrain.

**(f) Compliance**

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

**(g) Required Actions**

(1) Within 30 days after the effective date of this AD, revise the Limitations Section of the existing airplane flight manual (AFM) for your airplane by adding the information in Table 1 to paragraph (g)(1) of this AD and Table 2 to paragraph (g)(1) of this AD.

TABLE 1 TO PARAGRAPH (g)(1)—LIMITATIONS TO OPERATE THE FLIGHT MANAGEMENT SYSTEM (FMS) OF THE AIRPLANE

[Formulated as instructions to the flight crew]

| Limitation No. | Limitation/instruction |
|---|---|
| 1 | For Procedure Turn, Tear Drop trajectory, specified turn direction or arc to fix leg in published navigation procedure, disengage FMS Navigation mode and engage Track mode with the expected Track target. |
| 2 | When coupled to the AFCS, do not perform a Direct To while established in Turn. |
| 3 | Do not revise the flight plan until GO AROUND safe altitude (as per Standard Operating Procedure) has been reached. |
| 4 | Initialize the flight plan with at least an intermediate waypoint between departure and destination. |
| 5 | Before flying a procedure (including associated missed approach) that requires to fly over a waypoint, check that the fly-over flag is displayed on MCDU FPLN page beside the constrained fix, as expected in the published chart. If the fly-over is missing, it shall be set manually. |
| 6 | Do not use Vertical Step function. |
| 7 | Do not activate the data save command. |
| 8 | Do not use Offset function. |

TABLE 2 TO PARAGRAPH (g)(1)—FMS USER MANUAL LIMITATIONS

| Limitation No. | FMS user manual limitations |
|---|---|
| 1 | Operate the FMS respecting the limitations. |
| 2 | Only operate the FMS of the airplane with a specifically trained crew, as defined in the FMS User Manual, for awareness and training on the mitigation means to recover from the issue ''straight leg bypassing following arc to fix leg.'' |

(i) Inserting a copy of this AD into the Limitations Section of the existing AFM for your airplane satisfies the requirement of paragraph (g)(1) of this AD.

(ii) The actions required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(2) Within 30 days after the effective date of this AD, update the database for your Thales FMC2 NAVM, P/N C13084CA03, with a database that does not contain the procedures specified in section II of Thales Service Information Letter F9111–J70859DN–00, issued January 18, 2022 (Thales SIL F9111–J70859DN–00).

(3) As of the effective date of this AD, do not install a database for your Thales FMC2 NAVM, P/N C13084CA03, unless it does not include the procedures specified in section II of Thales SIL F9111–J70859DN–00.

**(h) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, East Certification 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 certification branch, send it to the attention of the person identified in paragraph (i)(2) of this AD.

(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.

**(i) Additional Information**

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2022–0024, dated February 4, 2022, for related information. This EASA AD may be found in the AD

docket at regulations.gov under Docket No. FAA–2023–1716.

(2) For more information about this AD, contact Nicholas Rediess, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (781) 238–7159; email: *9-AVS-AIR-BACO-COS@faa.gov.*

**(j) Material Incorporated by Reference**

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

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

(i) Thales Service Information Letter F9111–J70859DN–00, issued January 18, 2022.

**Note 1 to paragraph (j)(2)(i):** The footer on pages 2 through 32 of Thales Service Information Letter F9111–J70859DN–00, issued January 18, 2022, contains the text ''Reference: 0026–F9111–J70859DN–00.''

(ii) [Reserved]

(3) For service information identified in this AD, contact Thales AVS France SAS, 75–77 Avenue Marcel Dassault, 33700 Merignac, France; phone: +33 7 86 33 59 20; email: *continued.airworthiness@thalesgroup.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference 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.html.*

Issued on August 17, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–18116 Filed 8–23–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–1717; Project Identifier MCAI–2023–00728–A]**

**RIN 2120–AA64**

## Airworthiness Directives; Embraer S.A. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Embraer S.A. (Embraer) Model EMB–505 airplanes. This proposed AD was prompted by analysis of certain monuments (the right-hand refreshment center and left-hand forward cabinet) that identified the need for installing structural reinforcements and replacing certain floor support rivets. This proposed AD would require installing structural reinforcements on certain monuments and replacing certain floor support rivets, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this NPRM by October 10, 2023.

**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–2023–1717; 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 service information that is proposed for IBR in this NPRM, contact ANAC, Continuing Airworthiness Technical Branch (GTAC), Rua Doutor Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; phone: 55 (12) 3203–6600; email: *pac@anac.gov.br;* website: *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.* It is also available at *regulations.gov* under Docket No. FAA–2023–1717.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

**FOR FURTHER INFORMATION CONTACT:** Jim Rutherford, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4165; email: *jim.rutherford@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 to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1717; Project Identifier MCAI–2023–00728–A'' 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 Jim Rutherford, 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 ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2023–05–03, effective June 2, 2023 (ANAC AD 2023–05–03) (referred to after this as ''the MCAI''), to correct an unsafe condition on certain serial-numbered Embraer Model EMB–505 airplanes. The MCAI states that analysis identified certain monuments (the right-hand refreshment center and left-hand forward cabinet) that might not withstand the loads expected for specific emergency landing conditions, which may cause the detachment of mass items and result in injuries to the airplane occupants. To address this unsafe condition, the MCAI specifies installing structural reinforcements on certain monuments and replacing applicable floor support rivets.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1717.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed ANAC AD 2023–05–03, which specifies procedures for installing structural reinforcements on certain monuments and replacing applicable fasteners on the floor support.

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

**FAA's Determination**

These products have been approved by the 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, it 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 ANAC AD 2023–05–03 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

**Differences Between This Proposed AD and the MCAI**

The service information specified in ANAC AD 2023–05–03 allows the use of alternative or similar parts in place of the ones specified in the kits, provided these alternative or similar parts are approved by Embraer, but this proposed AD would require approval from either the Manager, International Validation Branch, FAA; ANAC; or ANAC's authorized Designee.

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate ANAC AD 2023–05–03 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2023–05–03 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.'' Service information required by ANAC AD 2023–05–03 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1717 after the FAA final rule is published.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 208 airplanes 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 |
|---|---|---|---|---|
| Airplane groups 1 and 2—install structural reinforcements. | 21.50 work-hours × $85 per hour = $1,827.50. | $1,600 | $3,427.50 | $239,925 (70 airplanes). |
| Airplane groups 3, 4, 5, and 10—install structural reinforcements and replace floor fasteners. | 13.50 work-hours × $85 per hour = $1,147.50. | 600 | 1,747.50 | $214,942.50 (123 airplanes). |
| Airplane groups 6 and 8—install structural reinforcements and replace floor fasteners. | 25.50 work-hours × $85 per hour = $2,167.50. | 2,000 | 4,167.50 | $37,507.50 (9 airplanes). |
| Airplane group 7—install structural reinforcements. | 19.50 work-hours × $85 per hour = $1,657.50. | 1,600 | 3,257.50 | $16,287.50 (5 airplanes). |
| Airplane group 9—install structural reinforcements. | 13.50 work-hours × $85 per hour = $1,147.50. | 1,600 | 2,747.50 | $2,747.50 (1 airplane). |

The FAA estimates the following costs for operators that did the actions in the original version of Embraer Service Bulletin SB505–25–0046, dated March 31, 2021. The agency has no way of determining the number of airplanes that might need these actions:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Inspect floor fasteners | 8.50 work-hours × $85 per hour = $722.50 | $50 | $772.50 |
| Replace floor fasteners | 1 work-hour × $85 per hour = $85 | 50 | 135 |

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

**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:

**Embraer S.A.:** Docket No. FAA–2023–1717; Project Identifier MCAI–2023–00728–A.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by October 10, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Embraer S.A. Model EMB–505 airplanes, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2023–05–03, effective June 2, 2023 (ANAC AD 2023–05–03), certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 2500, Cabin Equipment/Furnishings.

**(e) Unsafe Condition**

This AD was prompted by analysis of certain monuments (the right-hand refreshment center and left-hand forward cabinet) that identified the need for installing structural reinforcements and replacing applicable floor support rivets. The FAA is issuing this AD to address the unsafe condition. The unsafe condition, if not addressed, could result in a monument not withstanding the loads expected for specific emergency landing conditions, which may cause the detachment of mass items and result in injuries to the airplane occupants.

**(f) Compliance**

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

**(g) Required Actions**

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2023–05–03.

**(h) Exceptions to ANAC AD 2023–05–03**

(1) Where ANAC AD 2023–05–03 refers to its effective date, this AD requires using the effective date of this AD.

(2) The service information referenced in ANAC AD 2023–05–03 allows the use of alternative or similar parts in place of the ones specified in the kits, provided that these alternative or similar parts are approved by Embraer. This AD requires approval from either the Manager, International Validation Branch, FAA; ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(3) Where the service information referenced in ANAC AD 2023–05–03 specifies discarding parts, this AD requires removing those parts from service.

(4) This AD does not adopt paragraph (d) of ANAC AD 2023–05–03.

**(i) No Reporting Requirement**

Although the service information referenced in ANAC AD 2023–05–03 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) 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, mail it to the address identified in paragraph (k) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. 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.

**(k) Additional Information**

For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

**(l) Material Incorporated by Reference**

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

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

(i) Agência Nacional de Aviação Civil AD 2023–05–03, effective June 2, 2023.

(ii) [Reserved]

(3) For ANAC AD 2023–05–03, contact National Civil Aviation Agency (ANAC), Continuing Airworthiness Technical Branch (GTAC), Rua Doutor Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; phone: 55 (12) 3203–6600; email: *pac@anac.gov.br;* website: *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference 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.html.*

Issued on August 17, 2023.

**Victor Wicklund,**

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

[FR Doc. 2023–18119 Filed 8–23–23; 8:45 am]

**BILLING CODE 4910–13–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 416

**[Docket No. SSA–2023–0010]**

**RIN 0960–AI82**

## Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to revise our regulations by applying nationwide the In-Kind Support and Maintenance (ISM) rental subsidy exception that is currently in place for SSI applicants and recipients residing in seven States. The exception recognizes that a ''business arrangement'' exists when the amount of required monthly rent for a property equals or exceeds the presumed maximum value. This proposed rule would improve nationwide program uniformity, and, we expect, improve equality in the application of the rental subsidy policy.

**DATES:** To ensure that your comments are considered, we must receive them no later than October 23, 2023.

**ADDRESSES:** You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2023–0010 so that we may associate your comments with the correct regulation.

*Caution:* You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the ''search'' function to find docket number SSA–2023–0010. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to one week for your comment to be viewable.

2. *Fax:* Fax comments to 1–833–410–1631.

3. *Mail:* Mail your comments to the Office of Legislation and Congressional Affairs, Regulations and Reports Clearance Staff, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235.

Comments are available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Tamara Levingston, Office of Income Security Programs, 6401 Security Blvd., Robert M. Ball Building, Suite 2512B, Woodlawn, MD 21235, 410–966–7384. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *https://www.ssa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

We administer the SSI program, which provides monthly payments to: (1) adults and children with a disability or blindness; and (2) adults aged 65 or older. Eligible individuals must meet all the requirements in the Social Security Act (Act), including having resources and income below specified amounts.[1] Since SSI is a needs-based program for persons with limited income and resources, we must consider the amount of income an applicant or recipient has when determining whether that person is eligible to receive SSI payments. If the individual is eligible, their income is also a factor in calculating the amount of their monthly SSI payments.

Specifically, once an individual is determined eligible for SSI, their monthly payment amount is determined by subtracting their countable monthly income from the Federal benefit rate (FBR),[2] which is the monthly maximum Federal SSI payment.[3] The FBR for 2023 is $914 for an individual and $1,371 for an eligible individual with an eligible spouse.[4] Generally, the more income an individual has, the less their SSI payment will be.[5] For the purposes of SSI, ''income'' is defined as anything that an individual receives in cash or in kind that the individual can use to meet their needs for food and shelter.[6] The Act and our regulations [7] define income as ''earned,'' such as wages from work, and ''unearned,'' such as gifted cash.[8] Our proposed regulatory change pertains to rental subsidy, which is a type of ISM under the broader umbrella of unearned income.

### ISM

As noted above, income that affects an individual's monthly SSI payment can also be provided in kind.[9] Generally, we value in-kind items at their current market value and apply the various exclusions for both earned and unearned income; however, we have special rules for valuing food or shelter that is received as unearned income (ISM).[10] Under our current regulations, ISM means any food or shelter that is given to an individual or that the individual receives because someone else pays for it.[11] Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.[12] For example, if an SSI recipient's brother lets the recipient live rent-free in his home throughout a calendar month, we would consider the shelter the brother provides as ISM to the recipient. We have two rules for valuing the ISM that we must count: (1) currently, the one-third reduction rule (VTR) applies if the individual is living in the household of a person, throughout a month, who provides the individual with both food and shelter, and (2) the presumed maximum value rule (PMV) applies in all other situations in which the individual is

[1] See 42 U.S.C. 1382 and 20 CFR 416.202 for a list of the eligibility requirements. See also 20 CFR 416.420 for general information on how we compute the amount of the monthly payment by reducing the benefit rate by the amount of countable income as calculated under the rules in subpart K of 20 part 416.

[2] See 20 CFR 416.1101.

[3] See 20 CFR 416.405 through 416.415. Some States supplement the FBR amount.

[4] 87 FR 64296, 64298 (2022) A table of the monthly maximum Federal SSI payment amounts for an eligible individual, and for an eligible individual with an eligible spouse, is available at *https://www.ssa.gov/oact/cola/SSIamts.html.* When the FBR is adjusted for the cost of living, the amount of the potential ISM reduction adjusts accordingly.

[5] See 20 CFR 416.1100.

[6] See 20 CFR 416.1102.

[7] See 42 U.S.C. 1382a; and 20 CFR 416.1102–1124.

[8] See 20 CFR 416.1104.

[9] See 20 CFR 416.1102.

[10] See 20 CFR 416.1130(a).

[11] See 20 CFR 416.1130(b). We recently published a proposed rule to remove food from the calculation of ISM. See 88 FR 9779 *Omitting Food From In-Kind Support and Maintenance Calculations,* published February 15, 2023.

[12] See 20 CFR 416.1130(b).

receiving countable ISM.[13] For example, a recipient lives with a sibling. The recipient receives SNAP to pay for their own food, but does not pay shelter expenses. The sibling pays all the shelter expenses. Based on the recipient paying for their own food, SSI is calculated under the PMV rule. The VTR cannot apply, because the recipient is not receiving both food and shelter from the household.

The VTR rule is governed by legislation and requires SSA to reduce the applicable federal benefit rate by one-third when the recipient receives both food and shelter, throughout a month, from the household in which they reside.[14] The PMV rule, which is one-third the federal benefit rate plus $20, only applies if the recipient receives food or shelter from within the household. In addition, the PMV rule allows recipients to rebut the maximum amount of ISM being charged, by providing the actual value of the ISM being received. Rebuttal is not an option under the VTR rule.

**Rental Subsidy**

Our current regulation further clarifies that an individual is not receiving ISM in the form of room or rent if they are paying the required monthly rent charged under a ''business arrangement.'' [15] Under the current general definition, a ''business arrangement'' exists when the amount of monthly rent required to be paid equals the current monthly rental value (CMRV)—that is, the price of the rent on the open market in the individual's locality.[16] For example, if the owner of an apartment would rent that property to any potential tenant for $800 per month, then the CMRV is $800. Consequently, in this example, if an SSI recipient agrees to pay the landlord rent in the amount of $800 per month, a ''business arrangement'' would exist and the SSI recipient would not be receiving ISM in the form of room or rent. Conversely, under our current general definition of a ''business arrangement,'' if the SSI recipient rented the same property but paid only $400 per month, a ''business arrangement'' would not exist because $400 is less than the CMRV.[17]

When we develop possible rental subsidy, we first determine whether the required monthly rent is equal to the CMRV. In practice, our technicians must contact the landlord for information on the required monthly rent or reach out to an appropriate source for information about the CMRV for that property and locality. This source can be the landlord or another knowledgeable source (*e.g.,* a real estate firm or rental management agency). With this information in hand, we then compare the rent the individual is paying to the CMRV and document the reason for any reduced monthly rent. If the required monthly rent is less than the CMRV, we count the difference between the required monthly rent and the CMRV as ISM to the SSI applicant or recipient.[18] We use the presumed maximum value (PMV) rule to value this type of ISM. In valuing shelter under the PMV rule, instead of determining the actual dollar value of the shelter, we presume that the shelter is worth one-third of the FBR plus the amount of the $20 general income exclusion.[19] SSI applicants and recipients may rebut this presumption by showing that the value of the ISM they are receiving is less than the PMV.[20] Thus, under this current general policy, the amount of ISM counted is capped at the PMV. Conversely, if the rent equals or exceeds the CMRV, we determine that there is no rental subsidy.

Take the example of an SSI recipient living with their ineligible spouse and child who is renting a single-family home owned by the recipient's mother. The mother-landlord alleges the property has a CMRV of $1,500 per month, but she is requiring the SSI household to pay only $350 in rent per month. To calculate the rental subsidy under the current general policy, we would subtract the required monthly rent from the CMRV ($1,500 − $350 = $1,150), in which case the rental subsidy would be $1,150. We would divide the total rental subsidy by the number of people in the household ($1,150/3 = $383.33).[21] Per regulation, the maximum amount of ISM that can be charged is $324.66 a month for 2023. Therefore, the recipient's SSI payment is $589.34 ($914 (FBR 2023)—$324.66 (PMV for 2023)). This is with the understanding that the recipient has no other income.[22]

The following chart illustrates the above example:

EXAMPLE 1— CURRENT GENERAL RENTAL SUBSIDY POLICY

| Equation | Application of the example |
|---|---|
| CMRV − Required Monthly Rent = Household ISM | $1,500 − $350 = $1,150. |
| Household ISM/Number of people in household = ISM/Rental Subsidy to the SSI Recipient. | $1,150/3 people in household = $383.33. |
| ISM is capped at the PMV | $383.33 > $324.66. |
| SSI payment = FBR − PMV | SSI payment = $914 − $324.66 = $589.34. |

**Exception**

Following court cases that challenged how we applied ISM rules for rental subsidy, we provided an exception for residents living in jurisdictions covered by the Court of Appeals for the Seventh Circuit (in our regulations),[23] residents in the Second Circuit (in an Acquiescence Ruling),[24] and residents of Texas (in the Program Operations Manual System).[25] For residents of these seven excepted States (Connecticut, New York, Vermont, Illinois, Indiana, Wisconsin, and Texas), a ''business arrangement'' exists when the required monthly rent the SSI recipient is required to pay equals or exceeds the

[13] 20 CFR 416.1130(c).

[14] Social Security Act § 1612(a)(2)(A).

[15] 20 CFR 416.1130(b).

[16] Id. See also 20 CFR 416.1101.

[17] In this instance, we would apply ISM's PMV rule, as the individual is receiving some level of support from the landlord by paying less than the CMRV of the shelter.

[18] See Program Operations Manual System (POMS) SI 00835.380E.

[19] See 20 CFR 416.1140(a).

[20] See 20 CFR 416.1140(a)(2).

[21] The method for calculating the rental subsidy is described in POMS SI 00835.380(E)(1) *Procedure for valuing the actual value (AV) of the rental subsidy.* This methodology reflects our ISM regulatory policy's approach of examining rental subsidy from the perspective of the *household* (see *e.g.,* 20 CFR 416.1130).

[22] See 20 CFR 416.1140(a).

[23] See 20 CFR 416.1130(b); *Jackson* v. *Schweiker,* 683 F.2d 1076 (7th Cir. 1982).

[24] See Acquiescence Ruling (AR) 90–2(2): *Ruppert* v. *Bowen,* 871 F.2d 1172 (2d Cir. 1989)—*Evaluation of a Rental Subsidy as In-Kind Income for Supplemental Security Income (SSI) Benefit Calculation Purposes—Title XVI of the Social Security Act.* If we finalize this proposed rule, we will rescind AR 90–2(2) as obsolete, in accordance with 20 CFR 416.1485(e)(4).

[25] See *Diaz* v. *Chater,* No. 3:95–cv–01817–X (N.D. Tex. Apr. 17, 1996); POMS SIDAL 00835.380.

PMV.[26] In these States, if the required amount of rent is less than the PMV, then the value of the rental subsidy is the difference between the required monthly rent and the PMV or the CMRV, whichever is less. This means there may be a lower threshold for what qualifies as a ''business arrangement'' for applicants and recipients in these excepted States because, in many cases, the PMV is lower than the CMRV. Application of this exception tends to reduce the amount of ISM counted towards an individual's SSI payment, which generally results in a higher SSI payment amount. For example, an SSI recipient whose living arrangement is identical to that discussed in the prior example, but who resides in one of the seven States in which the exception applies, would not be charged ISM because the required monthly rent exceeds the PMV ($350 > $324.66). Consequently, the SSI recipient would continue to receive the FBR (provided they did not receive any other income countable for SSI purposes).

EXAMPLE 2—RENTAL SUBSIDY EXCEPTION POLICY PROPOSED TO BE EXTENDED

| | |
|---|---|
| PMV < CMRV | $324.66 < $1,500. |
| Required Monthly Rent > PMV | $350 > $324.66. |
| Therefore, no ISM to the SSI Recipient | = SSI Payment = $914. |

As illustrated by these examples, our current application of the ISM rules is not uniform nationwide, and the exception is an advantage only for those SSI applicants and recipients living in the seven excepted States.

**Rationale for Regulatory Action**

We propose to change the rental subsidy policy in our regulations by applying nationally the definition of ''business arrangement'' that currently applies in only seven States because of the court decisions noted above. The rationale of the courts that resulted in the situation currently in place in seven states, in particular in the Seventh Circuit decision in *Jackson* and the Second Circuit decision in *Ruppert,* also supports extending this policy to the other states, as outlined in our proposed rule. In *Jackson,* the Seventh Circuit reasoned that it is not enough for a claimant to be provided shelter at a rate below market value for that difference to be counted as ''income'' for SSI purposes; rather, to be counted as ''income,'' the difference between the market value and the actual rental payment must result in increased purchasing power to meet the claimant's basic needs.[27] The Seventh Circuit explained that ''purchasing power grows if in-kind contributions of shelter either make cash available to purchase necessities of life other than shelter or if, and to the extent, the quality of shelter itself is enhanced to meet basic needs.'' [28] Similarly, in *Ruppert,* the Second Circuit found that the difference between the CMRV and the required monthly rent does not always constitute an actual economic benefit which should be counted as ''income'' for SSI purposes.[29] To implement *Ruppert,* for residents of the Second Circuit, we announced that an applicant or recipient does not receive an ''actual economic benefit'' from a rental subsidy when the amount of required monthly rent equals or exceeds the PMV.[30]

Applying nationally the definition of ''business arrangement'' based on the PMV rather than the CMRV, and thus focusing on the SSI recipient's purchasing power or the actual economic benefit they receive, would also ensure that all SSI applicants and recipients, regardless of where they reside, would have the same policy applied to them regarding the definition of a business arrangement. This uniform definition of business arrangement means that no recipient's SSI payment amount would be lower simply because they reside in a State where the exception policy described above does not currently apply. This proposed policy change therefore supports our goal of enhancing equality in the programs we administer for all applicants and recipients.

This proposal will also foster efficiency in our administration of the SSI program, because we no longer would have to apply different policies on the definition of a business arrangement depending on the SSI applicant or recipient's State of residence. In any program as large as ours, ''the need for efficiency is self-evident.'' [31] As well, we expect that the proposal would improve customer service by reducing the amount of time we need to calculate SSI payment amounts in States in which the current exception does not apply. Because the exception is currently in place in some States, we already have a well-established procedure for applying the exception, and we are confident that such a change can be applied nationwide with minimal operational or systems impact.

We are also proposing this rule in response to specific requests from the public. Recently, we adopted the *Social Security Administration's Agency Strategic Plan for Fiscal Years 2022–2026* (*Strategic Plan*),[32] which defines our long-term goals and objectives over the next four years to further our overall mission. Among the stated goals, we resolve to optimize the experience of our customers by adopting policies aimed at serving individuals and communities. Our *Strategic Plan* further commits to engage the public and external stakeholders to better inform our regulatory activities.[33]

In support of these goals, we have been in communication since October 2022 with advocate groups representing a wide variety of claimants and beneficiaries from diverse backgrounds. In response, we received numerous suggestions for ways to improve access to our programs, particularly to our SSI program. Among the recommendations we received were suggestions to update and streamline the SSI program's rules on ISM.

As discussed above, the current lack of uniformity in our business arrangement definition can disadvantage affected SSI applicants

[26] See POMS SI 00835.380.B.7.

[27] *Jackson,* 683 F.2d at 1082–87; In *Jackson,* the Seventh Circuit addressed a situation where ''a very large percentage'' of an individual's income was already committed to shelter costs before the agency considered any unearned income from a rental subsidy. Under those circumstances, the additional value of the rental subsidy did not increase the individual's ability to pay for their other basic needs. See also *Supplemental Security Income for the Aged, Blind, and Disabled; Subpart K—Income,* 51 FR 13487, 13488 (Apr. 21, 1986).

[28] *Jackson,* 683 F.2d at 1084.

[29] *Ruppert,* 871 F.2d at 1179–81; *Social Security Acquiescence Ruling (AR) 90–2(2),* 55 FR 28947, 28949 (July 16, 1990).

[30] AR 90–2(2), 55 FR at 28949.

[31] See *Barnhart* v. *Thomas,* 540 U.S. 20, 29 (2003); *Heckler* v. *Campbell,* 461 U.S. 458, 461, n.2 (1983).

[32] *Social Security Administration, Agency Strategic Plan: Fiscal Years 2022–2026,* page 9, Strategic Goal 1: Optimize the Experience of SSA Customers and Strategic Objective 1.1—Identify and Address Barriers to Accessing Services. available at: *https://www.ssa.gov/agency/asp/.*

[33] Id.

and recipients who do not live in States where the rental subsidy exception applies. The differing application of the business arrangement definition was noted by the external parties, who recommended that we apply the current rental subsidy exception nationwide as one way to streamline the SSI program and make it more equitable. We agree with this recommendation. The proposed rules, if finalized, would benefit SSI applicants and recipients, no matter the State they live in, and make the SSI program easier to administer. The proposed change would also make the SSI program more equitable by applying the rental subsidy policy uniformly to all affected SSI applicants and recipients, regardless of where they live.

Moreover, as explained in the study *Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance,* ''[a]lthough SSI eligibility was intended to be determined on the basis of objective information on income and resources, development of ISM is often based on estimates of food and shelter expenses provided by the applicant or recipient and verified by other household members.'' [34] By applying the rental subsidy exception nationwide, the rent paid by the SSI applicant or recipient will be compared to a standard dollar amount—the PMV. Our technicians anticipate sending out fewer living arrangement development forms (form SSA–L5061, OMB 0960–0454) by instead confirming the limited necessary information with the landlord orally, namely: that the required rent amount is equal to or greater than the PMV.[35] The more detailed estimates currently provided by the landlord or other household members under our existing regulations are therefore less likely to be needed or used in administering the SSI program. This reduced need to contact landlords or other third parties for information regarding the CMRV also increases the efficiency of the SSI program by reducing the number of instances in which we have to seek out that information (We note that we would need to contact someone other than the landlord only if we cannot verify information with the landlord directly.). In summary, then, this new policy will result in greater efficiency and time savings for our employees, and a reduction in the reporting burden for the public (see Paperwork Reduction Act section of the preamble).

**Proposed Change**

As discussed above, we propose to apply nationwide the rental subsidy exception currently in place in seven States. Accordingly, our nationwide policy would be that a ''business arrangement'' exists when the amount of monthly rent required to be paid equals or exceeds the PMV. If the required amount of rent is less than the PMV, we would impute as ISM the difference between the required amount of rent and either the PMV or the CMRV, whichever is less. For example, if the required household rent is $300, and the CMRV amount is greater than the PMV, then the amount of household ISM would be $24.66 divided by the number of household members. However, this charge may be offset by other exclusions.

**Rulemaking Analyses and Notices**

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

**Clarity of This Rule**

Executive Order 12866, as supplemented by Executive Order 13563 and Executive Order 14094, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.,* grouping and order of sections, use of headings, paragraphing?

**When will we start to use this rule?**

We will not use this rule until we evaluate public comments and publish a final rule in the **Federal Register**. All final rules include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

**Regulatory Procedures**

*Executive Order 12866, as Supplemented by Executive Order 13563 and Executive Order 14094*

We consulted with the Office of Management and Budget (OMB) and determined that this rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 and Executive Order 14094. Therefore, OMB reviewed it.

Anticipated Transfers to Our Program

Our Office of the Chief Actuary estimates that implementation of this proposed rule would result in a total increase in Federal SSI payments of $971 million over fiscal years 2024 through 2033, assuming implementation of this rule on April 29, 2024. These transfers reflect an estimation that approximately 41,000 individuals who would be eligible under our current rules will have their Federal SSI payment increased by an average of $128 per month attributable to implementation of this rule. There would also be an additional 14,000 individuals who are not eligible under current rules who would be newly eligible and would apply for benefits under the proposed rule.

Anticipated Net Administrative Cost Savings to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this proposal will result in net

[34] See Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. *Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance.* Social Security Bulletin, vol. 68, no. 4, 2008, *www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html.*

[35] Claimants may provide certain types of evidence (*e.g.,* a rental agreement or lease) to support their allegation of rent amount, and in these circumstances an SSA technician does not need to reach out to the landlord to further develop the allegation. However, SSA finds that in many circumstances claimants do not provide SSA with the necessary evidence. In these cases, SSA will attempt to contact the landlord by phone to orally confirm the rent amount. If the landlord is not successfully reached, SSA may still be required to send the form SSA–L5061. SSA seeks comment on additional procedural considerations and/or acceptable forms of evidence (*e.g.,* proof of electronic transfer of funds in the alleged amount to the named landlord) that a claimant might provide that would be minimally burdensome while satisfactorily demonstrating proof of rent amount.

administrative savings of $10 million for the 10-year period from FY 2024 to FY 2033. The net administrative savings is mainly a result of unit time savings as field office employees will not have to spend time developing CMRV for all rental subsidy calculations during initial claims, pre-effectuations reviews, redeterminations, and post-eligibility actions. The savings are offset by costs to update our systems, costs to send notices to inform current recipients of the policy changes, costs to address inquiries from the notices, and costs because of more individuals' being eligible for SSI benefits, which increases claims, reconsiderations, appeals, redeterminations, and post-eligibility actions.

Anticipated Time-Savings and Qualitative Benefits to the Public

We anticipate the following qualitative benefits generated from this proposed policy:

- Saving time and effort for claimants and third parties who may have evidence related to a claimant's application because they would need to submit less information. SSA estimates at a minimum this will result in more than 7,000 hours of time saved in annual reduced paperwork burden, representing an opportunity cost of $1,140,526 (see the Paperwork Reduction Act section of the preamble below for specifics).
- Potentially get faster determinations or decisions regarding SSI eligibility or payment amount, or both, which would have both quantitative effects financially and, qualitatively, may alleviate stress for applicants and recipients associated with the length of time it may take to obtain SSI.
- Administratively easier to apply the same policy nationwide.

Anticipated Qualitative Costs

We do not anticipate more than *de minimis* costs associated with this rulemaking. We do not anticipate that this proposal would affect labor market participation in any significant way, in part because of the limited understanding of the current policy in the beneficiary community.

*Executive Order 13132 (Federalism)*

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

*Regulatory Flexibility Act*

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

*Paperwork Reduction Act*

This rule does not anticipate any new collections or require revisions to existing collections. However, the application of the revisions to these rules may cause a burden change to our currently approved information collections under the following information collection requests: 0960–0174, the SSA–8006, Statement of Living Arrangements, In-Kind Support and Maintenance; and 0960–0454, the SSA–L5061, Letter to Landlord Requesting Rental Information. Based on our current management information data from the seven states currently implementing these changes, we anticipate these changes will allow for verbal responses from landlords in place of the current form in some situations, thus reducing the overall burden as SSA will not require those respondents to complete the entirety of Form SSA–L51061. In addition, we note that for those who use the paper form, we will send a revised version with question #5 removed. We also anticipate a slight burden reduction to Form SSA–8006, as the respondents may not need to provide as much detail pertaining to their rental subsidy agreement due to the proposed rule.

The following chart shows the time burden information associated with the proposed rule:

| OMB No.; form No.; CFR citations | Number of respondents | Frequency of response | Current average burden per response (minutes) | Current estimated total burden (hours) | Anticipated new burden per response under regulation (minutes) | Anticipated estimated total burden under regulation (hours) | Estimated burden savings (hours) |
|---|---|---|---|---|---|---|---|
| 0960–0174 SSA–8006 (Paper Form) | 12,160 | 1 | 7 | 1,419 | 6 | 1,216 | 203 |
| 0960–0174 SSA–8006 (SSI Claims System) | 109,436 | 1 | 7 | 12,768 | 6 | 10,944 | 1,824 |
| 0960–0454 SSA–L5061 (Paper Form) | 35,640 | 1 | 10 | 5,940 | 8 | 4,752 | 1,188 |
| 0960–0454 SSA–L5061 (Phone Call) | 35,640 | 1 | 10 | 5,940 | 3 | 1,782 | 4,158 |
| Totals | 192,876 | | | 26,067 | | 18,694 | 7,373 |

The following chart shows the theoretical cost burdens associated with the proposed rule:

| OMB No.; form No.; CFR citations | Number of respondents | Anticipated estimated total burden under regulation from chart above (hours) | Average theoretical hourly cost amount (dollars) * | Average combined wait time in field office and/or teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|
| 0960–0174 SSA–8006 (Paper Form) | 12,160 | 1,216 | * $12.81 | ** 19 | *** $77,885 |
| 0960–0174 SSA–8006 (SSI Claims System) | 109,436 | 10,944 | * 12.81 | ** 24 | *** 443,931 |
| 0960–0454 SSA–L5061 (Paper Form) | 35,640 | 4,752 | * 29.76 | ** 24 | *** 565,678 |
| 0960–0454 SSA–L5061 (Phone Call) | 35,640 | 1,782 | * 29.76 | | *** 53,032 |

| OMB No.; form No.; CFR citations | Number of respondents | Anticipated estimated total burden under regulation from chart above (hours) | Average theoretical hourly cost amount (dollars) * | Average combined wait time in field office and/or teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|
| Totals | 192,876 | 19,882 | | | *** 1,140,526 |

* We based this figure on the average DI payments based on SSA's current FY 2023 data (*https://www.ssa.gov/legislation/2023factsheet.pdf*); on the average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2023 wait times for field offices and hearings office, as well as by averaging both the average FY 2023 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

SSA submitted a single new Information Collection Request which encompasses the revisions to both information collections (currently under OMB Numbers 0960–0174, and 0960–0454) to OMB for the approval of the changes due to the proposed rule. After approval at the final rule stage, we will adjust the figures associated with the current OMB numbers for these forms to reflect the new burden. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. In addition, we are specifically seeking comment on whether you have any questions or suggestions for edits to the forms referenced above in the context of this proposed regulatory change. Questions to consider might include (but are not limited to):

(1) Are there other SSA information collections we have not noted that you believe we should modify as a result of this proposed policy change?

(2) Do our new estimated time burdens accurately represent the time burden associated with these forms? The burden estimate should include both the time needed to answer the form's questions and activities such as the time spent gathering records and documentation if necessary, or travel time associated with developing and submitting the collection. If you believe our reported estimate is inaccurate (when considering that we anticipate a burden reduction associated with the rulemaking), please explain why.

(3) Are there modifications to the forms or the information collection processes associated with developing information about a recipient's potential rental subsidy that the agency should consider in developing this final rule (keeping in mind that there may be policy or operational limitations on our ability to implement some types of new information collection processes)?

If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

You can submit comments until October 23, 2023, which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by October 23, 2023, which is 60 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Programs No 96.006 Supplemental Security Income)

**List of Subjects in 20 CFR Part 416**

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

**Faye I. Lipsky,**

*Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.*

For the reasons stated in the preamble, we propose to amend 20 CFR chapter III, part 416, as set forth below:

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart K—Income

■ 1. The authority citation for subpart K of part 416 is revised to read as follows:

**Authority:** 42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b; sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2.In § 416.1130 revise paragraph (b) to read as follows:

**§ 416.1130 Introduction**

* * * * *

(b) *How we define in-kind support and maintenance.* In-kind support and maintenance means any food or shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly rent required to be paid equals or exceeds the presumed maximum value described in § 416.1140(a)(1). If the required amount of rent is less than the presumed maximum value, we will impute as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market rental value (see § 416.1101), whichever is less. In addition, cash payments to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.

* * * * *

[FR Doc. 2023–18213 Filed 8–23–23; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–108054–21]**

**RIN 1545–BQ07**

## Information Reporting and Transfer for Valuable Consideration Rules for Section 1035 Exchanges of Life Insurance and Certain Other Life Insurance Contract Transactions; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking; notice of hearing.

**SUMMARY:** This document provides a notice of public hearing on proposed regulations providing guidance on the application of the transfer for valuable consideration rules and associated information reporting requirements for reportable policy sales of interests in life insurance contracts to exchanges of life insurance contracts qualifying for nonrecognition of gain or loss, as well as to certain acquisitions of interests in life insurance contracts in transactions that qualify as corporate reorganizations.

**DATES:** The public hearing on this proposed regulation has been scheduled for Thursday, September 28, 2023, at 10:00 a.m. ET. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Wednesday, August 30, 2023. If no outlines are received by Wednesday, August 30, 2023, the public hearing will be cancelled.

**ADDRESSES:** The public hearing is being held in the Auditorium, at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

Send submissions to CC:PA:LPD:PR (REG–108054–21), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday to CC:PA:LPD:PR (REG–108054–21), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–108054–21) (preferred).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Allan H. Sakaue, (202) 317–6995; concerning submissions of outlines, the hearing, and/or to be placed on the building access list to attend the public hearing, call Vivian Hayes (202) 317–6901 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG–108054–21) that was published in the **Federal Register** on Wednesday, May 10, 2023, (FR 88 30058).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by August 30, 2023.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing, and via the Federal eRulemaking Portal (*www.Regulations.gov*) under the title of Supporting & Related Material. If no outline of the topics to be discussed at the hearing is received by August 30, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–108054–21 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–108054–21.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–108054–21 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–108054–21.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–108054–21 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–108054–21. Requests to attend the public hearing must be received by 5:00 p.m. ET by Monday, September 25, 2023.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–108054–21 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–108054–21. Requests to attend the public hearing must be received by 5:00 p.m. ET by Monday, September 25, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by Monday, September 25, 2023. Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

**Oluwafunmilayo A. Taylor,**

*Branch Chief, Publications and Regulations Branch, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2023–18193 Filed 8–23–23; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 230821–0200]**

**RIN 0648–BM12**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Amendment 52

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 52 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), as submitted by the South Atlantic Fishery Management Council (the Council). For golden tilefish, this proposed rule would revise the annual catch limits (ACLs), commercial longline component fishing season, and recreational accountability measures (AMs). For blueline tilefish, this proposed rule would reduce the recreational bag limit, modify the possession limits, and revise the recreational AMs. In addition, Amendment 52 would update the acceptable biological catch (ABC), overfishing limit (OFL), and annual optimum yield (OY). The purpose of this proposed rule and Amendment 52 is to respond to the most recent stock assessment for golden tilefish, and to prevent recreational landings from exceeding the recreational annual catch limits (ACLs) for golden tilefish and blueline tilefish.

**DATES:** Written comments must be received on or before September 25, 2023.

**ADDRESSES:** You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2023–0082,'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter ''NOAA–NMFS–2023–0082'', in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*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 *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).

Electronic copies of Amendment 52, which includes a fishery impact statement and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-52-changes-catch-levels-allocations-accountability-measures-and-management.*

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, telephone: 727–824–5305, or email: *karla.gore@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The South Atlantic snapper-grouper fishery, which includes golden tilefish and blueline tilefish, is managed under the FMP. The FMP was developed by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## Background

The Magnuson-Stevens Act requires that NMFS and the regional fishery management councils prevent overfishing and achieve, on a continuing basis, the optimum yield (OY) from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

All weights described in this proposed rule are in gutted weight unless otherwise specified.

The South Atlantic stock of golden tilefish was first assessed through the Southeast Data, Assessment, and Review (SEDAR) process in 2004 (SEDAR 4). In response to the assessment, the Council submitted management measures in Amendment 13C to the FMP. The final rule to implement Amendment 13C specified a commercial quota for golden tilefish of 295,000 lb (133,810 kg); a commercial trip limit for golden tilefish of 4,000 lb (1,814 kg), and, if 75 percent of the quota is landed on or before September 1, then a reduction of the trip limit to 300 lb (136 kg); and a recreational bag limit of one golden tilefish per person per day included within the five-grouper aggregate bag limit (71 FR 55096, September 21, 2006). The Council submitted sector allocations for golden tilefish in Amendment 17B to the FMP, allocating 97 percent of the ACL to the commercial sector and 3 percent of the ACL to the recreational sector. In addition, for golden tilefish, Amendment 17B contained management measures that established: a total ACL of 291,566 lb (132,252 kg), a commercial ACL of 282,819 lb (128,285 kg), and a recreational ACL of 1,578 fish; commercial and recreational AMs; and a longline endorsement for the commercial component of golden tilefish (75 FR 82280, December 30, 2010).

In 2011, a new stock assessment was completed for golden tilefish (SEDAR 25 2011) and the Council submitted Regulatory Amendment 12 to the FMP in response to the assessment. In Regulatory Amendment 12, the total ACL was set at 558,036 lb (253,121 kg), the existing allocations were applied to revise the sector ACLs to 541,295 lb (245,527 kg) for the commercial sector and 3,019 fish for the recreational sector, and the recreational annual catch target and sector AMs were revised (77 FR 61295, October 9, 2012). In Amendment 18B to the FMP, the golden tilefish commercial ACL was divided between two commercial fishing gear components, assigning 75 percent of the ACL to the longline component with a 4,000 lb (1,814 kg) trip limit and 25 percent of the ACL to the hook-and-line component with a 500 lb (227 kg) trip limit (78 FR 23858, April 23, 2013).

In 2016, an update to the SEDAR 25 stock assessment indicated that golden tilefish were undergoing overfishing (SEDAR 25 Update 2016). Following two interim rules that immediately aimed to reduce the overfishing (83 FR 65, January 2, 2018; 83 FR 28387, June 19, 2018), Regulatory Amendment 28 to the FMP implemented long-term measures that reduced the golden tilefish ACLs. The existing allocations were applied to revise the sector ACLs to 331,740 lb (150,475 kg) for the commercial sector (further divided with 75 percent to the longline component and 25 percent to the hook-and-line component) and 2,316 fish for the recreational sector (83 FR 62508, December 4, 2018).

The Council submitted Amendment 52 to the FMP in response to a new stock assessment for golden tilefish. The new assessment, SEDAR 66, was completed in 2020 and it indicated that the stock was not undergoing overfishing and was not overfished. SEDAR 66 includes recreational landings estimates using the Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES) as discussed below. The revised catch levels recommended by the Council in Amendment 52 and in this proposed rule are based on their SSC's recommended ABC and the results of SEDAR 66. The Council received the

results of the assessment and the SSC's recommendations for the OFL and ABC at the June 2021 Council meeting.

In response to golden tilefish longline vessel fishermen's concerns about avoiding oversupplying the market in the first part of January and allowing commercial longline vessels to remain fishing for golden tilefish during the Lenten season when prices tend to be relatively high, this proposed rule would change the starting date of the fishing season for the commercial longline component from January 1st to January 15th.

As for blueline tilefish, revising certain management measures would help keep the recreational sector within its ACL because the recreational landings for blueline tilefish managed under the FMP exceeded the recreational ACL every year from 2015–2020. The most recent stock assessments for blueline tilefish were completed in 2017 and did not indicate that the stock was undergoing overfishing or was being overfished.

NMFS has preliminarily determined that the actions in Amendment 52 and this proposed rule are based on the best scientific information available and are intended to achieve OY while minimizing, to the extent practicable, adverse social and economic effects pending further review following public comment.

**Management Measures Contained in This Proposed Rule**

For golden tilefish, this proposed rule would revise the sector ACLs, commercial component quotas, commercial longline component fishing season, and recreational AMs. For blueline tilefish, this proposed rule would revise the recreational bag and possession limits and recreational AMs.

*Golden Tilefish Total ACL*

As implemented through Regulatory Amendment 28 to the FMP, the current total ACL and annual OY for golden tilefish are equal to the current ABC of 342,000 lb (155,129 kg) (83 FR 62508, December 4, 2018). In Amendment 52, the ABC would be revised based on SEDAR 66 and the recommendation of the SSC, and the ABC, ACL, and annual OY would be set equal to each of these values.

Amendment 52 would revise the total ACL and annual OY equal to the recommended ABC of 435,000 lb (197,313 kg) for 2023; 448,000 lb (203,209 kg) for 2024; 458,000 lb (207,745 kg) for 2025; 466,000 lb (211,374 kg) for 2026 and subsequent fishing years.

*Golden Tilefish Sector Allocations and ACLs*

Amendment 52 would revise the sector allocations and sector ACLs for golden tilefish. The current sector ACLs for golden tilefish are based on the commercial and recreational allocations of the total ACL at 97 percent and 3 percent, respectively. The current allocations are based on the allocation formula [ACL = ((mean landings 2006–2008) * 0.5)) + ((mean landings 1986–2008) * 0.5))] adopted by the Council in the Comprehensive ACL Amendment to the FMP, which considered past and present participation (77 FR 15915, March 16, 2012). The Council established those allocations based on balancing long-term catch history with more recent catch history and believed that approach to be a fair and equitable method to allocate fishery resources.

The revised golden tilefish sector allocations in Amendment 52 would result in commercial and recreational allocations of 96.70 percent and 3.30 percent, respectively. The revised sector allocations were achieved by applying the allocation formula (described above) to the recreational MRIP FES estimates used in SEDAR 66. Utilizing these revised recreational estimates would result in a slight shift of allocation to the recreational sector, with the percentages of annual catch increasing from the current 3 percent to the proposed 3.30 percent. The limited recreational effort for, and harvest of, golden tilefish, were considered in determining that allocating 3.30 percent of the revised total ACL for golden tilefish to the recreational sector is a fair and equitable allocation that is reasonably calculated to promote conservation and does not give any entity an excessive share of harvest privileges based on the historical and current harvest of golden tilefish. In addition, this allocation division would encourage a rational and well-managed use of the golden tilefish resource, which optimizes social and economic benefits.

This proposed rule would revise the commercial ACLs (commercial sector hook-and-line and longline components combined) to be 420,645 lb (190,801 kg) for 2023; 433,216 lb (196,503 kg) for 2024; 442,886 lb (200,890 kg) for 2025; and 450,622 lb (204,399 kg) for the 2026 and subsequent fishing years.

This proposed rule would revise the recreational ACLs (in numbers of fish) to be 2,559 for the 2023 fishing year; 2,635 for the 2024 fishing year; 2,694 for the 2025 fishing year; 2,741 for the 2026 and subsequent fishing years.

*Golden Tilefish Commercial Component Allocations*

As discussed above, the commercial ACL is allocated between two gear components: 25 percent is allocated to the hook-and-line component and 75 percent to the longline component (77 FR 23858, April 23, 2013). The allocation percentages between the hook-and-line and longline components were not modified in Amendment 52. However, this proposed rule would revise the hook-and-line and longline component ACLs (quotas) based on the revised commercial ACL. The commercial hook-and-line ACL would be 105,161 lb (47,700 kg) for 2023; 108,304 lb (49,126 kg) for 2024; 110,722 lb (50,223 kg) for 2025; and 112,656 lb (51,100 kg) for 2026 and subsequent fishing years.

The ACLs for the longline component would be 315,484 lb (143,101 kg) for 2023; 324,912 lb (147,378 kg) for 2024; 332,165 lb (150,668 kg) for 2025; and 337,967 lb (153,299 kg) for the 2026 and subsequent fishing years.

*Golden Tilefish Commercial Longline Component Fishing Season*

This proposed rule would change the start date for the fishing season for the commercial longline component from January 1st to January 15th. A closed season would be established for the commercial longline component annually from January 1 through January 14. Starting the commercial season on January 15th for the longline component would help to avoid oversupplying the market in the first part of January and would allow commercial longline vessels to remain fishing for golden tilefish during the Lenten season when prices tend to be relatively high.

*Blueline Tilefish Recreational Bag and Possession Limits*

In August 2016, Regulatory Amendment 25 to the FMP established the current recreational bag limit of three fish per person per day (81 FR 45245, July 13, 2016). As discussed above, recreational landings for blueline tilefish have exceeded the recreational ACL every year from 2015–2020. This proposed rule would reduce the recreational bag limit for blueline tilefish from three to two fish per person per day to help prevent recreational landings from exceeding the recreational ACL in future fishing years.

Additionally, the captain and crew of a for-hire vessel with a valid Federal South Atlantic Charter/Headboat Snapper-Grouper Permit are currently allowed to retain bag limit quantities of

all snapper-grouper species during the open recreational season. In addition to reducing the recreational bag and possession limits to two fish per person per day, this proposed rule would prohibit the retention of blueline tilefish by the captain and crew in Amendment 52. A bag limit of two blueline tilefish per person per day and prohibiting retention of the bag limit by captain and crew would result in an overall 12.2 percent reduction in harvest for the recreational sector. The measures to reduce the blueline tilefish bag limit from three to two fish per person per day and prohibit the retention of the bag limit by for-hire captain and crew would, in combination, be expected to keep the recreational landings of blueline tilefish within the recreational ACL.

*Golden Tilefish and Blueline Tilefish Recreational AMs*

This proposed rule would also revise the recreational AMs for golden tilefish and blueline tilefish. The current recreational AMs for golden tilefish were established through the final rule for Amendment 34 to the FMP (81 FR 3731, January 22, 2016). The current recreational AMs for blueline tilefish were established through the final rule for Amendment 32 to the FMP (80 FR 16583, March 30, 2015). The current AMs for both species include an in-season closure for the remainder of the fishing year if recreational landings reach or are projected to reach their respective recreational ACL. The current post-season AMs state if the recreational ACL is exceeded, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and during that following fishing year, if the total ACL is exceeded and the species is overfished, the length of the recreational fishing season is reduced and the recreational ACL is reduced by the amount of the recreational ACL overage.

This proposed rule would revise the recreational AMs for both golden tilefish and blueline tilefish to remove the current in-season closure if the recreational ACL is reached or is projected to be reached, and the post-season AM that is tied to the overfished status of the stock. The revised recreational AM would have NMFS projecting the length of the recreational season based on catch rates from the previous fishing year to determine when the recreational ACL would be expected to be met. NMFS would announce the length of the recreational season and its ending date annually in the **Federal Register**.

The current AMs would be revised because of the time delay of when recreational landings information becomes available to use for in-season actions for species with short fishing seasons or relatively small amounts of fish. For blueline tilefish, the current recreational fishing season is 4 months long, from May through August, and the recreational ACL for golden tilefish is 2,316 fish. In these circumstances, the current in-season AMs would not be effective in keeping landings from exceeding the recreational ACL. As previously discussed, the recreational landings for blueline tilefish exceeded the recreational ACL every year from 2015–2020. The golden tilefish recreational ACL has also frequently been exceeded, with the recreational sector exceeding its ACL every year since 2010, except for 2014 and 2017.

The current post-season recreational AMs that would apply corrective action for ACL overages were not being triggered because they were tied to a determination that the stock was overfished, and neither blueline nor golden tilefish is considered to be overfished. Consequently, any overages of the recreational ACL would be likely to continue to occur.

In addition, the Magnuson-Stevens Act Guidelines under National Standard 1 advise Councils to reevaluate the system of ACLs and AMs when overages of a stock's ACL occur more than once in 4 consecutive years. The purpose of the revised AMs is to prevent recreational landings from exceeding the respective recreational ACLs for both golden tilefish and blueline tilefish. The revised recreational AMs would be more effective at restraining landings to the recreational ACL. For blueline tilefish, Amendment 52 would both modify the recreational AM and reduce the recreational retention limit to further ensure recreational landings would not exceed the ACL. Amendment 52 and this proposed rule would not adjust commercial AMs for either species.

**Management Measures in Amendment 52 Not Codified by This Proposed Rule**

In addition to the measures within this proposed rule, Amendment 52 would revise the OFL and update other biological reference points and revise the ABC, OY, and sector allocations for golden tilefish.

*Golden Tilefish ABC and Annual OY*

The current OFL and ABC are inclusive of MRIP Coastal Household Telephone Survey (CHTS) estimates of private recreational and charter landings. The Council's SSC reviewed the latest stock assessment (SEDAR 66) and recommended new ABC levels as determined by SEDAR 66. The assessment and associated ABC recommendations incorporated the revised estimates for recreational catch and effort from the MRIP Access Point Angler Intercept Survey (APAIS) and the updated FES. MRIP began incorporating a new survey design for APAIS in 2013 and replaced the CHTS with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 52, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. This difference in estimates is because MRIP FES is designed to measure fishing activity more accurately and not because there was a sudden increase in fishing effort. The MRIP FES is considered a more reliable estimate of recreational effort by the Council's SSC, the Council, and NMFS, and is a more robust method when compared to the MRIP CHTS method. The new ABC recommendations within Amendment 52 also represent the best scientific information available as determined by the SSC.

The OY for golden tilefish would be specified on an annual basis and would be set equal to the ABC and total ACL in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv).

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 52, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. The objective of this proposed rule is to base conservation and management measures for golden and blueline tilefish on the best scientific information available and achieve OY, consistent with the Magnuson-Stevens Act and its National Standards.

The Chief Counsel for Regulation of the Department of Commerce has

certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows. All monetary estimates in the following analysis are in 2020 dollars.

This proposed rule would revise the ABC, annual OY, and total ACL for South Atlantic golden tilefish. The current ABC, annual OY, and total ACL are 342,000 lb (155,129 kg). The recreational component of the current total ACL is based on MRIP CHTS data. This proposed rule would change these values to 435,000 lb (197,313 kg) in 2023, 448,000 lb (203,209 kg) in 2024, 458,000 lb (207,745 kg) in 2025, and 466,000 lb (211,374 kg) in 2026 and subsequent fishing years. The recreational component of the proposed total ACL is based on MRIP FES data. This proposed rule would also revise the commercial and recreational allocations of the total ACL for South Atlantic golden tilefish from 97 percent commercial and 3 percent recreational to 96.70 percent commercial and 3.30 percent recreational. In addition, this proposed rule would change the start date of the fishing season for the longline component of the commercial sector from January 1 to January 15. Each of these actions would regulate, and are expected to directly affect, commercial fishing businesses that commercially harvest South Atlantic golden tilefish. The average number of commercial fishing vessels that harvested South Atlantic golden tilefish between 2016 and 2020 was 106 vessels per year. Of those 106 vessels, 20 vessels specifically used longline gear to harvest South Atlantic golden tilefish on average per year.

Although the proposed changes to the total ACL and sector allocations also regulate for-hire fishing businesses that harvest golden tilefish by limiting their aggregate harvest, the analysis assumes that changes in the recreational portion of the total ACL would only affect catch per trip, not the overall number of target trips taken by for-hire fishing businesses, because of the relatively low bag limit for golden tilefish and the relatively large number of substitute target species for golden tilefish. Because for-hire fishing activity is not expected to change, the profits of for-hire businesses are not expected to change because of these actions.

This proposed rule would also modify the recreational AMs for golden tilefish and blueline tilefish. AMs do not regulate or directly affect for-hire fishing businesses. Thus, those actions are not germane under the Regulatory Flexibility Act (RFA). This proposed rule would also reduce the bag limit for blueline tilefish from 3 fish to 2 fish per angler per day and prohibit captain and crew on for-hire fishing trips from retaining the recreational bag limit. Recreational bag limits regulate the harvesting behavior of recreational anglers, including for-hire captain and crew, not the behavior of for-hire fishing businesses. Recreational anglers are not considered entities under the RFA, and thus the effects of those actions are also not germane to this analysis.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry 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 its combined annual receipts (revenue) do not exceed $11 million for all its affiliated operations worldwide. NMFS does not possess ownership data to determine whether commercial fishing vessels harvesting South Atlantic golden tilefish may be affiliated. Thus, each vessel is assumed to represent a single commercial fishing business. From 2016 through 2020, the maximum annual gross revenue earned by a single commercial fishing vessel that harvested South Atlantic golden tilefish was about $581,344. Based on this information, all commercial fishing businesses regulated by this proposed rule are determined to be small entities for the purpose of this analysis.

This proposed rule, if implemented, is expected to regulate all 106 commercial fishing vessels that commercially harvest South Atlantic golden tilefish. These vessels represent about 17 percent of all commercial fishing vessels with South Atlantic snapper grouper permits. Therefore, this proposed rule is expected to affect a substantial number of small entities.

The proposed action to revise the ABC, annual OY, and total ACL for South Atlantic golden tilefish from 342,000 lb (155,129 kg) based on MRIP CHTS data, to 435,000 lb (197,313 kg) in 2023, 448,000 lb (203,209 kg) in 2024, 458,000 lb (207,745 kg) in 2025, and 466,000 lb (211,374 kg) in 2026 and subsequent fishing years based on MRIP FES data is expected to benefit commercial fishing vessels that harvest South Atlantic golden tilefish. Specifically, commercial landings of South Atlantic golden tilefish averaged 335,285 lb (152,083 kg) per year from 2016 through 2020. The proposed total ACLs would increase the commercial ACL from 2023 through 2026 by an average of 105,102 lb (47,673 kg) per year. Because the commercial sector typically harvests all or almost all its ACL, it is assumed that the proposed commercial ACLs would be fully harvested. Given an average ex-vessel price of $4.71 per pound, annual gross revenue is expected to increase by approximately $495,030 per year on average. Because economic profit is approximately 4 percent of annual gross revenue for the affected fleet of commercial vessels, economic profit is expected to increase by about $19,801, or by approximately $187 per vessel. Average annual economic profit for these vessels is approximately $3,309 per vessel. Thus, this proposed action is expected to increase these commercial fishing vessels' economic profits by about 5.7 percent.

The proposed action to reduce the commercial allocation of the total ACL for South Atlantic golden tilefish from 97 percent to 96.70 percent is expected to have minor adverse effects on commercial fishing vessels. Even though the proposed commercial ACLs for 2023 through 2026 are higher than the current commercial ACL of 331,740 lb (150,475 kg), as well as the average commercial landings from 2016 through 2020, the reduction in the commercial allocation of the total ACL would be expected to reduce landings from what they would have been if the commercial allocation remained at 97 percent. However, the average reduction in commercial landings under the proposed commercial allocation of 96.70 percent is only 1,355 lb (615 kg) per year on average from 2023 through 2026. This reduction in landings would be expected to reduce gross revenue by $6,383 per year, and thus economic profit by $255 per year. On a per vessel basis, the reductions in gross revenue and economic profit are only $60.00 and $2.40 per year. Thus, economic profit per commercial fishing vessel is expected to be reduced by less than 0.01 percent on average per year as a result of reducing the commercial allocation of the total ACL. These minor adverse effects are significantly outweighed by the positive effects of the proposed action to change the total ACL.

The proposed action to change the starting date of the fishing season for the longline component of the commercial sector from January 1 to January 15 is expected to benefit vessels that harvest South Atlantic golden tilefish using longline gear. Starting the longline season at a later date is expected to shift some of the longline landings of South

Atlantic golden tilefish from January to March and April. From 2016 through 2020, the average ex-vessel price of South Atlantic golden tilefish in January was only $4.53 per pound. However, the average ex-vessel price was $4.86 per pound in March and $5.10 per pound in April. By shifting a higher proportion of the landings into March and April, gross revenue from commercial golden tilefish landings by longline vessels is expected to increase by approximately $27,475 per year on average. Economic profit is therefore expected to increase by about $1,100 per year on average. From 2016 through 2020, average gross revenue was approximately $106,479 per year while average economic profit per year was about $4,259 per commercial longline vessel. Given that 20 vessels harvested South Atlantic golden tilefish per year on average during this time, gross revenue and economic profit per vessel are expected to increase by $1,374 and $55, respectively. Thus, the proposed change in the starting date for the longline season from January 1 to January 15 is expected to increase annual economic profit by about 1.3 percent on average per vessel.

Based on the information above, although a substantial number of small entities would be affected by this proposed rule, this proposed rule would not have a significant economic impact on those entities. Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, 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 622**

Blueline tilefish, Commercial, Fisheries, Fishing, Golden tilefish, Recreational, South Atlantic.

Dated: August 21, 2023.

**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 622 as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.183, add paragraph (b)(10) to read as follows:

**§ 622.183 Area and seasonal closures.**

* * * * *

(b) * * *

(10) *Golden tilefish commercial longline component.* The golden tilefish commercial longline component in or from the South Atlantic EEZ is closed from January 1 through January 14, each year. During a closure, no vessel with a valid or renewable golden tilefish longline endorsement as described at 50 CFR 622.191(a)(2)(ii), and no person, may fish for, harvest or possess golden tilefish from the South Atlantic EEZ with longline gear on board.

■ 3. In § 622.187, add paragraph (b)(2)(iv) to read as follows:

**§ 622.187 Bag and possession limits.**

* * * * *

(b) * * *

(2) * * *

(iv) No more than two fish may be blueline tilefish. However, no blueline tilefish may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

* * * * *

■ 4. In § 622.190, revise paragraph (a)(2) to read as follows:

**§ 622.190 Quotas.**

* * * * *

(a) * * *

(2) *Golden tilefish.* (i) *Commercial sector* (*hook-and-line and longline components combined*).

(A) For the 2023 fishing year—420,645 lb (190,801 kg).

(B) For the 2024 fishing year—433,216 lb (196,503 kg).

(C) For the 2025 fishing year—442,886 lb (200,890 kg).

(D) For the 2026 and subsequent fishing years—450,622 lb (204,399 kg).

(ii) *Hook-and-line component.*

(A) For the 2023 fishing year—105,161 lb (47,700 kg).

(B) For the 2024 fishing year—108,304 lb (49,126 kg).

(C) For the 2025 fishing year—110,722 lb (50,223 kg).

(D) For the 2026 and subsequent fishing years—112,656 lb (51,100 kg).

(iii) *Longline component.*

(A) For the 2023 fishing year—315,484 lb (143,101 kg).

(B) For the 2024 fishing year—324,912 lb (147,378 kg).

(C) For the 2025 fishing year—332,165 lb (150,668 kg).

(D) For the 2026 and subsequent fishing years—337,967 lb (153,299 kg).

* * * * *

■ 5. Amend § 622.193 by:

■ a. Revising paragraphs (a)(1)(iii), (a)(2);

■ b. Adding new paragraph (a)(3); and

■ c. Revising paragraph (z)(2).

The revisions and addition read as follows:

**§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

(a) * * *

(1) * * *

(iii) If all commercial landings of golden tilefish, as estimated by the SRD, exceed the commercial ACL (including both the hook-and-line and longline component quotas) specified in § 622.190(a)(2)(i), and the combined commercial and recreational ACL specified in paragraph (a)(3) of this section is exceeded during the same fishing year, and golden tilefish are overfished based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL for that following fishing year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector.* The recreational ACL for golden tilefish is 2,559 fish for the 2023 fishing year; 2,635 fish for the 2024 fishing year; 2,694 for the 2025 fishing year; 2,741 fish for the 2026 and subsequent fishing years. NMFS will project the length of the recreational fishing season based on catch rates from the previous fishing year and when NMFS projects the recreational ACL specified in this paragraph (a)(2) is expected to be met, and annually announce the recreational fishing season end date in the **Federal Register**. On and after the effective date of the recreational closure notification, the bag and possession limit for golden tilefish in or from the South Atlantic EEZ is zero.

(3) *Combined commercial and recreational ACL.* The combined commercial and recreational ACL is 435,000 lb (197,313 kg), gutted weight, for the 2023 fishing year; 448,000 lb (203,209 kg), gutted weight, for the 2024 fishing year; 458,000 lb (207,745 kg), gutted weight, for the 2025 fishing year; and 466,000 lb (211,374 kg), gutted weight, for the 2026 and subsequent fishing years.

* * * * *

(z) * * *

(2) *Recreational sector.* The recreational ACL for blueline tilefish is 116,820 lb (52,989 kg), round weight. NMFS will project the length of the recreational fishing season based on catch rates from the previous fishing year and when NMFS projects the

recreational ACL specified in this paragraph (z)(2) is expected to be met, and annually announce the recreational fishing season end date in the **Federal Register**. On and after the effective date of the recreational closure notification, the bag and possession limit for blueline tilefish in or from the South Atlantic EEZ is zero.

* * * * *

[FR Doc. 2023–18247 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 88, No. 163
Thursday, August 24, 2023

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 25, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* National Veterinary Service Laboratories; Bovine Spongiform Encephalopathy Surveillance Program.

*OMB Control Number:* 0579–0409.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002 (7 U.S.C. 8301–8317) is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any animal or related material if necessary, to prevent the spread of any livestock or poultry pest or disease. APHIS' National Veterinary Services Laboratories (NVSL) safeguard U.S. animal health and contribute to public health by ensuring that timely and accurate laboratory support is provided by their nationwide animal health diagnostic system. USDA complies with the standard set by the World Organization for Animal Health for bovine spongiform encephalopathy surveillance.

*Need and Use of the Information:* APHIS will collect information using forms VS 17–146 and VS 17–146a, BSE Surveillance Submission Form/Continuation Sheet and VS 17–131, BSE Surveillance Data Collection Form. APHIS will use the information collected to safeguard the U.S. animal health population against BSE. Without the information APHIS would be unable to monitor and prevent the incursion of BSE into the United States.

*Description of Respondents:* Business or other for-profit; State, local or Tribal government.

*Number of Respondents:* 178.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 3,421.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2023–18266 Filed 8–23–23; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2022–0031]**

### Notice of Availability of a Draft Supplemental Environmental Assessment and Draft Finding of No Significant Impact for Emergency Response for Highly Pathogenic Avian Influenza Outbreaks in the United States Migratory Bird Flyways

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** We are advising the public that a draft supplemental environmental assessment (EA) and draft finding of no significant impact (FONSI) have been prepared by the Animal and Plant Health Inspection Service relative to our emergency response activities to highly pathogenic avian influenza outbreaks in commercial and backyard poultry operations located in the four migratory bird flyways in the United States. This draft EA supplements the initial EA and FONSI we published in September 2022, which evaluated the environmental impacts associated with the first seven States where highly pathogenic avian influenza outbreaks occurred. We are making this draft supplemental EA and draft FONSI simultaneously available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before September 25, 2023.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0031 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0031, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The draft supplemental EA, draft FONSI, and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, located in room 1620 of the USDA South Building, 14th Street and

Independence Avenue SW, Washington, DC 20250. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Chelsea Bare, Chief of Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 1400 Independence Avenue SW, Whitten Building Room 318–E, Washington, DC 20250; (515) 337–6128; *chelsea.j.bare@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Animal Health Protection Act (AHPA) (7 U.S.C. 8301–8322) the Secretary of Agriculture is authorized to protect the health of livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock, poultry, and aquaculture, and eradicating such diseases within the United States when feasible. This authority has been delegated to the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS).

Highly pathogenic avian influenza (HPAI) virus is one such disease of livestock. HPAI is extremely infectious and often fatal to poultry.[1] Avian influenza (AI) viruses may circulate freely in wild bird populations without the birds appearing sick. As these birds migrate, they carry HPAI and other AI viruses with them and may subsequently transmit AI to domestic birds. HPAI can rapidly spread within and between domestic poultry flocks and wild bird (especially waterfowl) populations. Because birds infected with HPAI become a source of disease to additional poultry and wild birds, it is APHIS' objective to stamp out HPAI as rapidly as possible at locations where it has been found. Preventing the entry of diseased birds and eggs into the United States, monitoring AI in migratory birds, identifying AI strains occurring primarily in migratory waterbird species, as well as backyard and commercial poultry flocks, and stamping out HPAI as it arises in domestic poultry is important for the long-term maintenance of disease-free United States poultry stocks.

On February 8, 2022, the HPAI H5N1 (AI strain) virus subtype was detected in a commercial turkey flock in Indiana. By February 24, 2022, H5N1 had been detected in commercial poultry facilities and backyard flocks in seven States (Indiana, Kentucky, Virginia, New York, Maine, Delaware, and Michigan). Due to the emergency situation and in accordance with 7 CFR 372.10 of APHIS' National Environmental Policy Act (NEPA) Implementing Procedures, APHIS published a draft environmental assessment (EA) and draft finding of no significant impact (FONSI) in April 2022 to allow VS to carry out emergency response activities as a result of HPAI outbreaks in the aforementioned seven States at the start of 2022. A final EA titled ''Emergency Response for HPAI Outbreaks in Seven States'' and final FONSI were published in September 2022.[2]

Since the preparation and publication of the final EA and final FONSI for the initial seven States, HPAI outbreaks have continued to occur across the United States. Within 15 months, the virus was confirmed in 325 commercial and 507 backyard flocks, affecting approximately 59 million birds in 47 States.[3] As HPAI outbreaks have been stamped out, new outbreaks emerge and are likely to continue with seasonal (*i.e.,* spring and fall) bird migrations. For this reason, APHIS prepared a supplemental EA to cover VS' HPAI emergency outbreak response activities in the four North American migratory bird flyways (*i.e.,* the Atlantic, Mississippi, Central, and Pacific Flyways). APHIS' review and analysis of the potential environmental impacts associated with VS' HPAI emergency outbreak response activities for additional outbreaks in commercial and backyard poultry operations in the four North American migratory bird flyways are documented in detail in the draft supplemental EA titled ''Emergency Response for Highly Pathogenic Avian Influenza Outbreaks in the United States Migratory Bird Flyways.''

The draft supplemental EA presents the purpose and need for the action, a description of the affected environment, and an analysis of potential environmental impacts of the No Action and Proposed Action (Preferred) Alternatives. The two alternatives considered in the supplemental EA meet the purpose and need for VS to carry out its goal to stamp out HPAI as quickly as possible.

Potential direct and indirect effects on the environment are evaluated under each alternative. The potential environmental impacts on the following resources are considered in the draft supplemental EA: Soil, air, and water quality; humans (including effects on health and safety; cultural and historic resources; equity and environmental justice; children's health, and Tribes); and wildlife and plant populations, especially birds of conservation concern, eagles, and threatened and endangered species. The draft supplemental EA also considers cumulative impacts from other past, present, and reasonably foreseeable future related actions.

Based on the draft supplemental EA, APHIS has concluded that the Proposed Action Alternative will not have a significant impact on the quality of the human environment and a draft FONSI is appropriate with respect to the proposed action. After the public comment period ends, we will consider all comments received, revise the draft supplemental EA to address these comments, as appropriate, and publish a final NEPA document and decision.

The draft supplemental EA was prepared in accordance with: (1) the National Environmental Policy Act of 1969[4] (42 U.S.C. 4321 *et seq.*), (2) the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR parts 1500–1508) in effect as of the date of this notice, (3) USDA's NEPA implementing regulations (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 18th day of August 2023.

**Michael Watson,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2023–18185 Filed 8–23–23; 8:45 am]

**BILLING CODE 3410–34–P**

[1] Domestic poultry that can be affected include chickens; turkeys; ring-necked pheasants; ducks; geese; common, Japanese, or bobwhite quail; Indian peafowl; chukar or grey partridge; pigeons; ostrich; and guinea fowl.

[2] To view the draft EA, final EA, comments, and the FONSI, go to *www.regulations.gov* and enter APHIS–2022–0031 in the Search field.

[3] Current HPAI outbreak data can be accessed at APHIS' website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/avian/avian-influenza/2022-hpai.*

[4] The Fiscal Responsibility Act of 2023 (Pub. L. 118–5), which became effective on June 3, 2023, amended the National Environmental Policy Act. The draft final EA and FONSI described in this notice were prepared before the effective date of the Fiscal Responsibility Act of 2023 and reflect the requirements of the National Environmental Policy Act before June 3, 2023.

## DEPARTMENT OF COMMERCE

### Office of Secretary

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) Review and Approval; Comment Request; The Environmental Questionnaire and Checklist

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 May 31, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* Office of Facilities and Environmental Quality, Commerce.

*Title:* The Environmental Questionnaire and Checklist.

*OMB Control Number:* 0690–0028.

*Form Number(s):* CD–593.

*Type of Request:* Regular submission (an extension of a current information collection).

*Number of Respondents:* 1,000.

*Average Hours per Response:* 3 hours.

*Burden Hours:* 3,000.

*Needs and Uses:* This request is for an extension of a currently approved information collection. The National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) and the Council on Environmental Quality's (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508) require that federal agencies complete an environmental analysis for all major federal actions significantly affecting the environment. Those actions may include a federal agency's decision to fund non-federal projects under grants and cooperative agreements, including infrastructure projects. In order to determine NEPA compliance requirements for a project receiving Department of Commerce (DOC) bureau level funding, DOC must assess information which can only be provided by the applicant for federal financial assistance (grant).

The Environmental Questionnaire and Checklist (EQC) provides federal financial assistance applicants and DOC staff with a tool to ensure that the necessary project and environmental information is obtained. The EQC was developed to collect data concerning potential environmental impacts that the applicant for federal financial assistance possesses and to transmit that information to the Federal reviewer. The EQC will allow for a more rapid review of projects and facilitate DOC's evaluation of the potential environmental impacts of a project and the level of NEPA documentation required. DOC staff will use the information provided in answers to the questionnaire to determine compliance requirements for NEPA and conduct subsequent NEPA analysis as needed. Information provided in the questionnaire may also be used for other regulatory review requirements associated with the proposed project, such as the National Historic Preservation Act.

*Affected Public:* Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local or Tribal Government; Federal Government, etc.

*Frequency:* One-Time; annually.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* 42 U.S.C. 4321 *et seq.*

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 0690–0028.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.*

[FR Doc. 2023–18226 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–NW–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Transportation and Related Equipment, Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on September 6, 2023, 9:30 a.m., Eastern Daylight Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

**Agenda**

*Public Session*

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

*Closed Session*

4. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than August 30, 2023.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 12, 2023, pursuant to 5 U.S.C. 1009(d) of the FACA, that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1)

and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2023–18212 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on September 7, 2023, 10:00 a.m., Eastern Daylight Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

**Agenda**

*Open Session*

1. Opening Remarks and Introduction by BIS Senior Management.
2. Report from working groups.
3. Report by regime representatives.

*Closed Session*

4. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than August 30, 2023.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 12, 2023, pursuant to 5 U.S.C. chapter 10 of the FACA, (5 U.S.C. 1009(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2023–18215 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Announcement of Approved International Trade Administration Trade Mission

**AGENCY:** International Trade Administration, Department of Commerce.

**SUMMARY:** The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

This mission is:

Clean EDGE (Enhancing Development and Growth through Clean Energy) and Environmental Technologies Business Development Mission to India—March 4–11, 2024.

A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.*

For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

**The Following Conditions for Participation Will Be Used for the Mission**

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by

the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content.

A trade association/organization applicant must certify and agree to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

**The Following Selection Criteria Will Be Used for the Mission**

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission. Balance of company size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions. The Department of Commerce will evaluate applications and inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected.

**Definition of Small- and Medium-Sized Enterprise**

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (*https://www.sba.gov/size-standards*) can help you determine the qualifications that apply to your company.

*Mission List:* (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

**Clean EDGE (Enhancing Development and Growth Through Clean Energy) and Environmental Technologies Business Development Mission to India—March 4–11, 2024**

**Summary**

The United States Department of Commerce, International Trade Administration (ITA), is organizing an executive-led Clean EDGE and Environmental Technologies Business Development Mission to India on March 4–11, 2024, with stops in Delhi and Mumbai. In addition to these stops, mission participants can select an optional additional stop in Hyderabad or Chennai. The additional optional stops will not be executive led.

The trade mission will support the U.S. vision to grow sustainable and secure clean energy markets in India by promoting U.S. exports and removing trade barriers. This trade mission will accelerate the adoption and deployment of energy and environmental solutions, helping India to meet its climate commitments. The trade mission builds on U.S. Secretary of Commerce Gina Raimondo's March 2023 trip to India to co-lead the U.S.-India Commercial Dialogue. This mission also supports ITA's ongoing efforts to strengthen the U.S.-India Comprehensive Global Strategic Partnership, develop inclusive and fair trade and investment policies, and leverage the interests of the private sector in pursuing new market opportunities that advance prosperity in both countries. The mission builds on several existing energy and environmental technology programs and events, including those organized under the Department of Commerce-led Clean EDGE U.S.-India Energy Industry Network.

Mission participants will have the opportunity to participate in meetings with key Indian decision makers to discuss how to foster policies, regulations, and financial investments that support the development of sustainable, secure, and clean energy markets, supporting the protection of human health and the environment. Mission participants will network with Indian national and state government officials, be introduced to prospective business partners, and facilitate discussions on best practices in their areas of technical expertise. Participants will gain market insights, make industry contacts, solidify business strategies, discuss enabling policies, and advance specific projects with the primary goal of increasing U.S. exports of clean energy and environmental technologies, products, and services to India. The mission will include customized one-on-one business matchmaking appointments and networking events. Participation in the trade mission will be open to energy sector and environmental technology businesses meeting the prerequisites for participation outlined in the Conditions of Participation below.

Following the mission, participants may want to take advantage of the India Smart Utility Week trade show held in Delhi on March 12–16, 2024. India Smart Utility Week is a major international event on smart grids, electric mobility, and smart cities. The trade show includes international participation from policy makers, regulators, and the private sector. Representatives from more than 50 countries have participated in previous years. The India Smart Utility Week trade show is not a part of the mission nor a Department of Commerce event.

**Best Prospects**

The below list, while not exhaustive, identifies key products, services, and technologies that would be an appropriate fit for the trade mission. ITA is committed to assembling a trade mission delegation that is representative

of a broad range of energy and environmental technology sectors, with an emphasis on sectors that advance clean and sustainable energy and environment goals.

- Renewable power generation (solar, offshore wind, green hydrogen, etc.)
- Carbon abatement technologies for thermal power generation, including Carbon Capture, Utilization, and Storage (CCUS) technologies
- Energy efficiency technologies specific to the energy and environmental technologies sectors
- Distributed energy resources
- Microgrids
- Transmission and Distribution (T&D) equipment
- Smart grid information communications technologies and services
- Distribution automation/substation automation
- Energy storage technologies
- Supervisory Control and Data Acquisition (SCADA) systems
- Energy cybersecurity software and services
- Engineering, procurement, and construction for energy and environment-related infrastructure projects
- Energy management systems
- Air pollution monitoring and control technologies
- Water and wastewater management systems
- Waste-to-energy equipment

**Other Products and Services**

Applications from companies exporting products or services within the scope of this mission, but not specifically identified, will be considered and evaluated by the U.S. Department of Commerce. Companies whose products or services do not fit the scope of the mission may contact their local U.S. Commercial Service office to learn about other business development missions and services that may provide more targeted export opportunities. Companies may visit *https://www.trade.gov/contact-us* to obtain such information. This information also may be found on the website: *https://www.trade.gov/.*

**Proposed Timetable**

* *Note:* The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

| | |
|---|---|
| Monday, March 4, 2024 | • All Trade Mission Participants Arrive in DELHI. |
| Tuesday, March 5, 2024 | • *Official Trade Mission Program Commences.*<br>• DELHI (Full Day Sessions).<br>• Networking Reception. |
| Wednesday, March 6, 2024 | • DELHI (Full Day Sessions).<br>• Travel to MUMBAI (Evening). |
| Thursday, March 7, 2024 | • MUMBAI (Full Day Sessions).<br>• Networking Reception. |
| Friday, March 8, 2024 | • MUMBAI (Full Day Sessions).<br>• *Official Trade Mission Concludes.* |
| Saturday, March 9, 2024 | • Companies participating in Spinoffs travel to next stop. |
| Sunday, March 10, 2024 | • Opportunities for Tourism.<br>• Companies participating in Spinoffs travel to next stop. |
| Monday, March 11, 2024 | • SPINOFFS: HYDERABAD or CHENNAI (Full Day Sessions). |

**Participation Requirements**

Applicants must sign and submit a completed trade mission application form and satisfy all the conditions of participation to be eligible for consideration. ITA plans to select a minimum of 15 and a maximum of 20 firms to participate in the official trade mission program. Business-to-business meetings will be offered and will include a total of 5–7 meetings in Delhi and Mumbai. A maximum number of companies has been set for each of the spinoff programs: Hyderabad-three company maximum; Chennai-ten company maximum.

**Fees and Expenses**

After a firm or trade association has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Business Development Mission will be $4,093 for small or medium-sized enterprises (SME) and $6,276 for large firms. The fee for the additional program in Hyderabad is $950 for SMEs and $3,400 for large firms; the fee for the optional program in Chennai is $1,315 for SMEs and $1,818 for large firms or trade associations. The fee for each additional firm representative (large firm or SME) is $1000. Meetings will be conducted in English and ground transportation to meetings will be provided for delegation participants. Personal interpreters and driver services can be arranged for additional cost.

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/*

*passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Department of Commerce trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than October 20, 2023.

The Department of Commerce will review applications and inform applicants of selection decisions in two tranches. The first recruitment deadline will end on September 15, 2023. At most eight companies will be approved during the first recruitment deadline. The second deadline will be on October 20, 2023. Applicants from the first tranche that were not one of the eight approved companies will be considered in the second tranche. Applications received after October 20, 2023, will be considered only if space and scheduling constraints permit.

**Contacts**

Matthew Eiss, International Trade Specialist, Office of South Asia, Phone: +1–202–893–1470, Email: *Matthew.Eiss@trade.gov*

Frances Selema (Recruitment Lead), Global Asia Team Leader, U.S. Commercial Service—Greensboro, Phone: +1–919–695–6366, Email: *Frances.Selema@trade.gov*

Victoria Yue, Senior Climate Trade Policy Specialist, Office of Energy and Environmental Industries, Phone: +1–202–482–3492, Email: *Victoria.Yue@trade.gov*

Debra Martin, Commercial Officer, U.S. Embassy in India—New Delhi, Phone: +91–11–2347–2192, Email: *Debra.Martin@trade.gov*

Haisum Shah, Senior International Trade Specialist, U.S. Commercial Service—Portland, Oregon, Phone: +1–503–347–1708, Email: *Haisum.Shah@trade.gov*

Danielle Caltabiano, Global Energy Team Leader, U.S. Commercial Service—Houston, Phone: +1–281–228–5655, Email: *Danielle.Caltabiano@trade.gov*

Elizabeth Laxague, Global Environmental Technologies Team Leader, U.S. Commercial Service—Seattle, Phone: +1–206–406–8903, Email: *Elizabeth.Laxague@trade.gov*

**Gemal Brangman,**

*Director, Trade Events Management Task Force.*

[FR Doc. 2023–18225 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–412–826, A–469–816, A–475–836, A–489–831, A–520–808, A–580–891, A–791–823, A–821–824, A–822–806, A–823–816]**

### Carbon and Certain Alloy Steel Wire Rod From Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Continuation of Antidumping Duty Orders

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

**SUMMARY:** As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on carbon and certain alloy steel wire rod (steel wire rod) from Belarus, Italy, the Republic of Korea (Korea), the Russian Federation (Russia), the Republic of South Africa (South Africa), Spain, the Republic of Turkey (Turkey), Ukraine, the United Arab Emirates (UAE), and the United Kingdom would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders.

**DATES:** Applicable August 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** Seth Brown, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0029.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 24, 2018, Commerce published in the **Federal Register** the AD orders on steel wire rod from Belarus, Russia, and the UAE.[1] On March 14, 2018, Commerce published in the **Federal Register** the AD orders on steel wire rod from South Africa and Ukraine.[2] Finally, on May 21, 2018, Commerce published in the **Federal Register** the AD orders on steel wire rod from Italy, Korea, Spain, Turkey, and the United Kingdom (collectively, *Orders*).[3] On December 1, 2022, the ITC instituted,[4] and Commerce initiated,[5] the first sunset reviews of these *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of these *Orders* would be likely to lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins and net subsidy rates likely to prevail should the *Orders* be revoked.[6]

[1] *See Carbon and Alloy Steel Wire Rod from Belarus, the Russian Federation, and the United Arab Emirates: Antidumping Duty Orders,* 83 FR 3297 (January 24, 2018), as corrected in *Carbon and Alloy Steel Wire Rod From Belarus, the Russian Federation, and the United Arab Emirates: Notice of Correction to Antidumping Duty Orders,* 83 FR 5402 (February 7, 2018) (correcting one of the Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope).

[2] *See Carbon and Alloy Steel Wire Rod from the Republic of South Africa and Ukraine: Antidumping Duty Orders,* 83 FR 11175 (March 14, 2018).

[3] *See Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey,* 83 FR 23417 (May 21, 2018).

[4] *See Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom; Institution of Five-Year Reviews,* 87 FR 73789 (December 1, 2022).

[5] *See Initiation of Five Year (Sunset) Reviews,* 87 FR 73757 (December 1, 2022).

[6] *See Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine, the United*

Continued

On August 2, 2023, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[7]

**Scope of the Orders**

The products covered by these *Orders* are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the HTSUS definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under these *Orders* are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these proceedings is dispositive.

**Continuation of the Orders**

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be August 2, 2023.[8] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the Commission.

**Administrative Protective Order (APO)**

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation of the APO which is subject to sanctions.

**Notification to Interested Parties**

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act and 19 CFR 351.218(f)(4).

Dated: August 18, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2023–18229 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Amended Trade Mission Application Deadline to the Financial Technologies Business Development Mission to Singapore and Japan, With an Optional Stop in South Korea

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Commerce, International Trade Administration (ITA), is organizing the Financial Technologies Business Development Mission to Singapore and Japan, with an optional stop in South Korea on November 13–20, 2023. This notice is to update the prior **Federal Register** notice to reflect that the application deadline is now extended to August 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

**SUPPLEMENTARY INFORMATION:** Amendment to Revise the Trade Mission Deadline for Submitting Applications.

**Background**

**Financial Technologies Business Development Mission to Singapore and Japan, With an Optional Stop in South Korea**

The International Trade Administration has determined that to allow for optimal execution of recruitment the application deadline has been extended from July 21, 2023, to August 31, 2023. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the 88 FR 43297 (July 7, 2023). The applicants selected will be notified as soon as possible.

**Contact**

Peter Sexton, U.S. Commercial Service, U.S. Export Assistance Center—New York, NY, 212–809–2647, *Peter.Sexton@trade.gov.*

Gemal Brangman, Trade Events Management Task Force, Washington, DC, 202–482–3773, *Gemal.Brangman@trade.gov.*

Vincent Tran, Office of Finance & Insurance, Washington, DC, 202–713–0242, *Vincent.Tran@trade.gov.*

**Gemal Brangman,**

*Director, Trade Events Management Task Force.*

[FR Doc. 2023–18224 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–DR–P**

*Arab Emirates, and the United Kingdom: Final Results of Expedited First Sunset Reviews of Antidumping Duty Orders,* 88 FR 15955 (March 15, 2023), and accompanying Issues and Decision Memorandum.

[7] *See Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom,* 88 FR 50911 (August 2, 2023) (*ITC Final Determinations*).

[8] *See ITC Final Determinations.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–112, C–570–113]**

### Antidumping and Countervailing Duty Orders on Certain Collated Steel Staples From the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to the Kingdom of Thailand and the Socialist Republic of Vietnam

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that imports of certain collated steel staples (collated staples) that were: (1) exported from the Kingdom of Thailand (Thailand) using inputs (*i.e.,* steel wire and wire band) manufactured in the People's Republic of China (China), and (2) exported from the Socialist Republic of Vietnam (Vietnam) using wire band manufactured in China, as specified below, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on collated staples from China.

**DATES:** Applicable August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith (Thailand) and Shane Subler (Vietnam), Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 and (202) 482–6241, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 20, 2020, Commerce published in the **Federal Register** AD and CVD orders on U.S. imports of collated staples from China.[1] On December 14, 2022, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(d)(1)(ii), Commerce initiated country-wide circumvention inquiries to determine whether imports of collated staples, completed in Thailand and Vietnam (collectively, the third countries), using inputs (*i.e.,* steel wire and wire bands) manufactured in China, are circumventing the *Orders* and, accordingly, should be covered by the scope of the *Orders.*[2] On March 3 and 7, 2023, Commerce selected two respondents from each of the examined third countries as the mandatory respondents in these circumvention inquiries.[3]

On May 11, 2023, Commerce extended the deadline for issuing the preliminary determinations in these circumvention inquiries by 88 days, until August 18, 2023.[4] For a complete description of the events that followed the initiation of these circumvention inquiries, *see* the Preliminary Decision Memoranda.[5] The topics included in the Preliminary Decision Memoranda are identified in Appendix I of this notice. The Preliminary Decision Memoranda are public documents and are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memoranda can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

#### Scope of the Orders

The merchandise covered by the *Orders* is certain collated steel staples. For a full description of the scope of the *Orders, see* the Preliminary Decision Memoranda.

#### Merchandise Subject to the Circumvention Inquiries

These circumvention inquiries cover collated staples, assembled or completed in Thailand using Chinese-origin steel wire and/or wire bands, and in Vietnam using Chinese-origin wire bands, that are subsequently exported from Thailand and Vietnam to the United States (inquiry merchandise).

#### Methodology

Commerce made these preliminary circumvention determinations in accordance with section 781(b) of the Act and 19 CFR 351.226. For a full description of the methodology underlying the preliminary determinations, *see* the Preliminary Decision Memoranda.

#### Preliminary Circumvention Determinations

We preliminarily determine that collated staples, assembled or completed in Thailand by the entities identified in Appendix II of this notice, using Chinese-origin steel wire, and/or wire bands, that are subsequently exported from Thailand to the United States, are circumventing the *Orders.* For a detailed explanation of our determinations with respect to the entities identified in Appendix II, *see* the Preliminary Decision Memorandum for Thailand.

We also preliminarily determine that collated staples, assembled or completed in Vietnam by the entities identified in Appendix II of this notice, using Chinese-origin wire bands, that are subsequently exported from Vietnam to the United States, are circumventing the *Orders.* For a detailed explanation of our determinations with respect to the entities identified in Appendix II, *see* the Preliminary Decision Memorandum for Vietnam and the ''Use of Adverse Facts Available'' section, below.

As detailed in the Preliminary Decision Memoranda, we also preliminarily determine that U.S. imports of inquiry merchandise exported from Thailand and Vietnam are circumventing the *Orders* on a country-wide basis.

*See* the ''Suspension of Liquidation and Cash Deposit Requirements'' section below for details regarding suspension of liquidation and cash deposit requirements. *See* the ''Certification'' and ''Certification Requirements'' sections below for details regarding the use of certifications for inquiry merchandise exported from Thailand and/or Vietnam.

#### Use of Adverse Facts Available

Pursuant to section 776(a) of the Act, if necessary information is not available on the record, or an interested party withholds requested information, fails to provide requested information by the deadline or in the form and manner requested, or significantly impedes a proceeding, Commerce shall use the facts otherwise available in reaching the applicable determination. Moreover, pursuant to section 776(b) of the Act,

[1] *See Certain Collated Steel Staples from the People's Republic of China: Antidumping Duty Order,* 85 FR 43815 (July 20, 2020) (*Collated Staples AD Order*) and *Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Order,* 85 FR 43813 (July 20, 2020) (*Collated Staples CVD Order*) (collectively, *Orders*).

[2] *See Certain Collated Steel Staples from the People's Republic of China: Initiation of Circumvention Inquiries on* the Antidumping Duty and Countervailing Duty Orders, 87 FR 78047 (December 21, 2022) (*Initiation Notice*).

[3] *See* Memorandum, ''Identification of Mandatory Respondents,'' dated March 3, 2023; *see also* Memorandum, ''Kingdom of Thailand Respondent Identification,'' dated March 7, 2023.

[4] *See* Memorandum, ''Extension of Preliminary Determination,'' dated May 11, 2023.

[5] *See* Memoranda, ''Certain Collated Steel Staples from the People's Republic of China: Preliminary Decision Memorandum for the Circumvention Inquiry with Respect to the Kingdom of Thailand,'' and ''Certain Collated Steel Staples from the People's Republic of China: Preliminary Decision Memorandum for the Circumvention Inquiry with Respect to the Socialist Republic of Vietnam,'' each dated concurrently with, and hereby adopted by, this notice (collectively, Preliminary Decision Memoranda).

Commerce may use inferences adverse to the interests of an interested party in selecting from among the facts otherwise available if the party fails to cooperate by not acting to the best of its ability to provide requested information.

For purposes of respondent selection, Commerce requested information from certain companies in Vietnam related to the quantity and value (Q&V) of their exports during the inquiry period. In these Q&V questionnaires, Commerce explained that, if the company to which Commerce issued the questionnaire failed to respond to the questionnaire, or failed to provide the requested information, Commerce may find that the company failed to cooperate by not acting to the best of its ability to comply with the request for information, and may use an inference that is adverse to the company's interests in selecting from the facts otherwise available. Two companies to which Commerce issued the Q&V questionnaire in the Vietnam inquiry (*i.e.,* Meihotech Vietnam Inc. (Meihotech) and Weifang Wenhe Pneumatic Tools Co., Ltd. (Weifang Wenhe)) received, but failed to timely respond to, the Q&V questionnaire.

Therefore, we preliminarily find that necessary information is not available on the record and that Meihotech and Weifang Wenhe withheld requested information, failed to provide requested information by the deadline or in the form and manner requested, and significantly impeded the inquiry. Moreover, we find that these companies failed to cooperate to the best of their ability to provide the requested Q&V information because they did not timely respond to Commerce's Q&V questionnaire. Consequently, we relied upon adverse inferences with respect to Meihotech and Weifang Wenhe in selecting from among the facts otherwise available on the record, pursuant to sections 776(a) and (b) of the Act. For details regarding the adverse facts available relied upon in our decision, *see* the Preliminary Decision Memorandum for Vietnam.

Therefore, we preliminarily determine that Meihotech and Weifang Wenhe exported inquiry merchandise and that U.S. entries of that merchandise are circumventing the *Orders.* Additionally, we are preliminarily precluding Meihotech and Weifang Wenhe from participating in the certification program that we are establishing for exports of collated staples from Vietnam.

U.S. entries of inquiry merchandise made on or after December 14, 2022, that are ineligible for certification based on the failure of Meihotech and Weifang Wenhe to cooperate, or for other reasons, shall remain subject to suspension of liquidation until final assessment instructions on those entries are issued, whether by automatic liquidation instructions, or by instructions pursuant to the final results of an administrative review.[6] Interested parties that wish to have their suspended entries, if any, reviewed, and their ineligibility for the certification program re-evaluated, should request an administrative review of the relevant suspended entries during the next anniversary month of these *Orders* (*i.e.,* July 2024).[7]

## Suspension of Liquidation and Cash Deposit Requirements

Based on the preliminary affirmative country-wide determinations of circumvention for Thailand and Vietnam, and the preliminary affirmative determinations of circumvention for the companies identified in Appendix II, in accordance with 19 CFR 351.226(l)(2), we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and require a cash deposit of estimated duties on unliquidated entries of collated staples, assembled or completed in Thailand using Chinese-origin steel wire and/or wire bands, and in Vietnam using Chinese-origin wire bands, that were entered, or withdrawn from warehouse, for consumption on or after December 21, 2022, the date of publication of the *Initiation Notice.*[8]

For exporters of the collated staples that have a company-specific cash deposit rate under the *Collated Staples AD Order* and/or *Collated Staples CVD Order,* the cash deposit rate will be the company-specific AD and/or CVD cash deposit rate established for that company in the most recently completed segment of the collated staples proceedings. For exporters of collated staples that do not have a company-specific cash deposit rate under the *Collated Staples AD Order* and/or *Collated Staples CVD Order,* the cash deposit rate will be the company-specific cash deposit rate established under the *Collated Staples AD Order* and/or *Collated Staples CVD Order* for the company that exported the steel wire and/or wire bands to the producer/exporter in Thailand and for the company that exported the wire bands to the producer/exporter in Vietnam that were incorporated in the imported collated staples.

If neither the exporter of the collated staples from Thailand, nor the Chinese exporter of the steel wire and/or wire bands has a company-specific cash deposit rate, the AD cash deposit rate will be the China-wide rate (112.01 percent), and the CVD cash deposit rate will be the ''all-others'' rate (12.32 percent).

If neither the exporter of the collated staples from Vietnam, nor the Chinese exporter of the wire bands, has a company-specific cash deposit rate, the AD cash deposit rate will be the China-wide rate (112.01 percent), and the CVD cash deposit rate will be the ''all-others'' rate (12.32 percent). Commerce has established the following third-country case numbers in the Automated Commercial Environment (ACE) for such entries: Thailand A–549–112/C–549–113; Vietnam A–552–112/C–552–113. The suspension of liquidation will remain in effect until further notice.

## Certified Entries

Entries for which the importer and exporter have met the certification requirements described below and in Appendices III and IV to this notice will not be subject to suspension of liquidation, or the cash deposit requirements described above. Failure to comply with the applicable requisite certification requirements may result in the merchandise being subject to antidumping and countervailing duties.

## Certifications

In order to administer the preliminary country-wide and company-specific affirmative determinations of circumvention for Thailand and Vietnam, Commerce has established importer and exporter certifications. These certifications will permit importers and exporters to establish that specific entries of collated staples from Thailand and Vietnam are not subject to suspension of liquidation or the collection of cash deposits pursuant to these preliminary country-wide affirmative determinations of circumvention because the merchandise meets the component content requirements described in the certification (*see* Appendix III (for Thailand) and Appendix IV (for Vietnam) to this notice). Because Meihotech and Weifang Wenhe were non-cooperative, they are not eligible to use the certifications described above.[9]

[6] Commerce continues to consider the process by which companies may demonstrate eligibility for the certification program in future segments of the collated staples proceedings. Commerce encourages interested parties to provide comments on this topic in their case briefs.

[7] *See* 19 CFR 351.213(b).

[8] *See* 19 CFR 351.226(l)(2)(ii).

[9] *See* Preliminary Decision Memorandum for Vietnam at ''Use of Facts Available with Adverse Inferences,'' and, *e.g., Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of*

Importers and exporters that claim that an entry of collated staples is not subject to suspension of liquidation or the collection of cash deposits based on the inputs used to manufacture such merchandise must complete the applicable certification and meet the certification and documentation requirements described below, as well as the requirements identified in the applicable certification.

**Certification Requirements**

Importers are required to complete and maintain the applicable importer certification, and maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry. The importer, or the importer's agent, must submit both the importer's certification and the exporter's certification to CBP as part of the entry process by uploading them into the document imaging system (DIS) in ACE. Where the importer uses a broker to facilitate the entry process, it should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to certify on behalf of the importer.

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (*e.g.,* invoice, purchase order, production records, *etc.*). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification must be completed by the party selling the collated staples that were manufactured in Thailand or Vietnam to the United States.

Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. Importers and exporters are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For all collated staples from Thailand and Vietnam that were entered, or withdrawn from warehouse, for consumption during the period December 2022 (*i.e.,* the date of publication of the *Initiation Notice,* through the date of publication of these preliminary determinations in the **Federal Register**, where the entry has not been liquidated (and entries for which liquidation has not become final), the relevant certification should be completed and signed as soon as practicable, but not later than 45 days after the date of publication of these preliminary determinations in the **Federal Register**. For such entries, importers and exporters each have the option to complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof. The exporter must provide the importer with a copy of the exporter certification within 45 days of the date of publication of these preliminary determinations in the **Federal Register**.

For unliquidated entries (and entries for which liquidation has not become final) of collated staples that were declared as non-AD/CVD type entries (*e.g.,* type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period December 21, 2022 (the date of publication of the *Initiation Notice*) through the date of publication of these preliminary determinations in the **Federal Register**, for which none of the above certifications may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD type entries to AD/CVD type entries (*e.g.,* type 01 to type 03). Importers should report those AD/CVD type entries using the following third-country case numbers: Thailand A–549–112/C–549–113; Vietnam A–552–112/C–552–113. Other third-country case numbers may be established following the process described above. The importer should pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

If it is determined that an importer and/or exporter has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to these preliminary country-wide affirmative determinations of circumvention and the *Orders,*[10] all unliquidated entries for which these requirements were not met and to require the importer to post applicable AD and CVD cash deposits equal to the rates noted above.

Interested parties may comment in their case briefs on these certification requirements, and on the certification language contained in the appendices to this notice.

**Public Comment**

Case briefs or other written comments for a particular country should be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the issuance of these preliminary determinations.[11] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in these circumvention inquiries are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing for a particular country, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party that will attend the hearing and whether any of those individuals is a foreign national; and (3) a list of the issues that the party intends to discuss at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

*Circumvention of the Antidumping Duty Order,* 63 FR 18364, 18366 (April 15, 1998), unchanged in *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672, 54675–76 (October 13, 1998).

[10] *See Orders.*

[11] *See* 19 CFR 351.226(f)(4).

[12] *Id.; see also* 19 CFR 351.303 (for general filing requirements).

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

**U.S. International Trade Commission Notification**

Consistent with section 781(e) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of these preliminary determinations to include the merchandise subject to these circumvention inquiries within the *Orders.* Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the inquiry merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.

**Notification to Interested Parties**

These determinations are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(1).

Dated: August 18, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

| Appendix No. | Appendix name |
|---|---|
| I | Topics Discussed in the Preliminary Decision Memoranda. |
| II | Companies Preliminarily Found to Be Circumventing the *Orders*. |
| III | Certification Regarding Chinese Inputs—Thailand. |
| IV | Certification Regarding Chinese Inputs—Vietnam. |

## Appendices

## Appendix I

**Topics Discussed in the Preliminary Decision Memoranda**

**Thailand**

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to the Circumvention Inquiry
V. Period of the Circumvention Inquiry
VI. Affiliation
VII. Non-Market Economy Methodology for Valuing Material Inputs From China
VIII. Statutory and Regulatory Framework for the Circumvention Inquiry
IX. Statutory Analysis for the Circumvention Inquiry
X. Summary of Statutory Analysis
XI. Certification Process and Country-Wide Affirmative Determination of Circumvention
XII. Recommendation

**Vietnam**

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to the Circumvention Inquiry
V. Period of the Circumvention Inquiry
VI. Application of Facts Available and Use of Adverse Inferences
VII. Surrogate Country and Methodology for Valuing Factors of Production and Processing in Vietnam
VIII. Surrogate Country and Methodology for Valuing Factors of Production and Processing in China
IX. Statutory and Regulatory Framework for the Circumvention Inquiry
X. Analysis of Statutory Criteria for the Circumvention Inquiry
XI. Summary of Statutory Analysis
XII. Country-Wide Affirmative Determination of Circumvention
XIII. Recommendation

## Appendix II

**Companies Found To Be Circumventing the Orders**

**Thailand**

1. YF Technology Corporation, Ltd.
2. UM Industry, Co., Ltd.

**Vietnam**

1. Vina Hardwares Joint Stock Company
2. VN Fasteners Co., Ltd.
3. Vina Staples Company Limited
4. Meihotech Vietnam Inc. (based on adverse facts available)
5. Weifang Wenhe Pneumatic Tools Co., Ltd. (based on adverse facts available)

## Appendix III

**Certification Regarding Chinese Inputs (for Thailand)**

**Importer Certification**

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the certain collated steel staples (collated staples) from the People's Republic of China (China) completed in Thailand that entered under the entry summary number(s), identified below, and are covered by this certification. ''Direct personal knowledge'' refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter's and/or seller's identity and location.

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The collated staples covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The collated staples covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer regarding the source of the inputs used to produce the imported products).

F. The importer certifies that the collated staples produced in Thailand that are covered by this certification were not manufactured using steel wire and/or wire bands produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

G. The collated staples covered by this certification are not covered by the antidumping duty or countervailing duty orders on collated staples from China.

H. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Entry Summary Line Item #:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Foreign Seller's Invoice Line Item #:
Producer:
Producer's Address:

I. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

J. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the

certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

K. I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

L. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

M. I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on certain collated steel staples from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

N. I understand that agents of the importer, such as brokers, are not permitted to make this certification.

O. This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

P. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

*Signature*

{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

**Exporter Certification**

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the production and exportation of the collated staples for which sales are identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

C. The collated staples covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

D. The seller certifies that the collated staples produced in Thailand that are covered by this certification were not manufactured using steel wire and/or wire bands produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

E. The collated staples covered by this certification are not covered by the antidumping duty or countervailing duty orders on collated staples from China.

F. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:
Foreign Seller's Invoice to U.S. Customer Line Item #:
Producer Name:
Producer's Address:
Producer's Invoice # to the Foreign Seller: (*if the foreign seller and the producer are the same party, report ''NA'' here*)

G. I understand that {EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

H. I understand that {EXPORTING COMPANY} is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon the request of either agency.

I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that is covered by the scope of the antidumping and countervailing duty orders on collated staples from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the shipment date is on or before the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

*Signature*

{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

## Appendix IV

**Certification Regarding Chinese Inputs (for Vietnam)**

**Importer Certification**

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the certain collated steel staples (collated staples) from the People's Republic of China (China) completed in Vietnam that entered under the entry summary number(s), identified below, and are covered by this certification. ''Direct personal knowledge'' refers to the facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the exporter's and/or seller's identity and location.

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The collated staples covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The collated staples covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer regarding the source of the inputs used to produce the imported products).

F. The importer certifies that the collated staples produced in Vietnam that are covered by this certification were not manufactured using wire bands produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

G. The collated staples covered by this certification are not covered by the antidumping duty or countervailing duty orders on collated staples from China.

H. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Entry Summary Line Item #:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Foreign Seller's Invoice Line Item #:
Producer:
Producer's Address:

I. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, production records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

J. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to information regarding the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

K. I understand that {NAME OF IMPORTING COMPANY} is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon the request of either agency.

L. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

M. I understand that failure to maintain the required certifications and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are entries of merchandise that is covered by the scope of the antidumping and countervailing duty orders on collated staples from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

N. I understand that agents of the importer, such as brokers, are not permitted to make this certification.

O. This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

P. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

*Signature*

{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

**Exporter Certification**

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the production and exportation of the collated staples for which sales are identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

C. The collated staples covered by this certification were shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

D. The seller certifies that the collated staples produced in Vietnam that are covered by this certification were not manufactured using wire bands produced in China, regardless of whether sourced directly from a Chinese producer or from a downstream supplier.

E. The collated staples covered by this certification are not covered by the antidumping duty or countervailing duty orders on collated staples from China.

F. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:
Foreign Seller's Invoice to U.S. Customer Line Item #:
Producer Name:
Producer's Address:
Producer's Invoice # to the Foreign Seller: (if the foreign seller and the producer are the same party, report ''NA'' here)

G. I understand that {EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product specification sheets, customer specification sheets, production records, invoices, etc.) until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

H. I understand that {EXPORTING COMPANY}is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon the request of either agency.

I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are sales of merchandise that is covered by the scope of the antidumping and countervailing duty orders on collated staples from China. I understand that such a finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the shipment date is on or before the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

*Signature*

{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

[FR Doc. 2023–18252 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Manufacturing Extension Partnership Advisory Board

**AGENCY:** National Institute of Standards and Technology, Commerce

**ACTION:** Notice of open meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Wednesday, September 13, 2023.

**DATES:** The meeting will be held on Wednesday, September 13, 2023, from 10 a.m. to 5:30 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held in person at the Buffalo Niagara Convention Center, 153 Franklin St., Buffalo, NY 14202. Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below. Interested parties should be sure to check the NIST MEP Advisory Board website for the most up-to-date information at *http://www.nist.gov/mep/about/advisory-board.*

**FOR FURTHER INFORMATION CONTACT:** Cheryl L. Gendron, Hollings Manufacturing Extension Partnership Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800; telephone number 301–975–2785; email: *cheryl.gendron@nist.gov.*

**SUPPLEMENTARY INFORMATION:** The MEP Advisory Board is authorized under 15 U.S.C. 278k(m), in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 1001 *et seq.* The Hollings Manufacturing Extension Partnership Program (Program) is a unique program consisting of Centers in all 50 states and Puerto Rico with partnerships at the federal, state and local levels. By statute, the MEP Advisory Board provides the NIST Director with: (1) advice on the activities, plans and policies of the Program; (2) assessments of the soundness of the plans and strategies of the Program; and (3) assessments of current performance against the plans of the Program.

Background information on the MEP Advisory Board is available at *http://www.nist.gov/mep/about/advisory-board.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the MEP Advisory Board will hold an open meeting on Wednesday, September 13, 2023, from 10 a.m. to 5:30 p.m. Eastern Time. The meeting will be open to the public. The meeting agenda will include an update on the MEP programmatic operations, as well as provide guidance and advice on current activities related to the current MEP National Network™ 2023–2027 Strategic Plan. The agenda may change to accommodate Board business. The final agenda will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 20 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. Requests must be submitted by email to *cheryl.gendron@nist.gov* and must be received by Wednesday, September 6, 2023, to be considered. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who wished to speak but could not be accommodated on the agenda or those who are/were unable to attend the meeting are invited to submit written statements by email to *cheryl.gendron@nist.gov.*

*Admittance Instructions:* All wishing to attend the MEP Advisory Board meeting must submit their name, organization, email address and phone number to Cheryl Gendron (*Cheryl.Gendron@nist.gov* or 301–975–2785) no later than Wednesday, September 6, 2023, 5 p.m. Eastern Time. In person seating is limited and will be available on a first-come, first-served basis. Detailed instructions on how to join the meeting will be sent to registered attendees.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2023–18253 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### A Preliminary Update From the Internet of Things Federal Working Group

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice; request for comment.

**SUMMARY:** The National Institute of Standards and Technology (NIST) seeks comments on the document *A Preliminary Update from the Internet of Things Federal Working Group* (Preliminary Update). The Preliminary Update was developed from input from the Federal Working Group and public information presented at the NIST IoT Advisory Board. It is intended to document the current state of the IoT Federal Working Group's approach to addressing the reporting requirements in the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283).

**DATES:** Comments in response to this notice must be received by 5:00 p.m. Eastern time on September 25, 2023.

**ADDRESSES:** Written comments may be submitted by mail to Barbara Cuthill, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2000, Gaithersburg, MD 20899. Electronic submissions may be sent to *iotfwg@nist.gov,* and may be in any of

the following formats: HTML, ASCII, Word, RTF, or PDF.

The Preliminary Update is available electronically from the NIST website at: IoT Federal Working Group | NIST.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, contact: Barbara Cuthill, U.S. Department of Commerce, NIST, MS 2000, 100 Bureau Drive, Gaithersburg, MD 20899, telephone (301) 975–3273, email *IoTFWG@nist.gov.* Please direct media inquiries to NIST's Public Affairs Office at (301) 975–NIST.

**SUPPLEMENTARY INFORMATION:** In January, 2020, the Congress enacted the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283). Section 9204(b)(5) of this act established the Internet of Things Federal Working Group (IoTFWG) with NIST as the convenor of the working group. The specific duties assigned to the IoTFWG are:

Duties.—The working group shall—

(A) identify any Federal regulations, statutes, grant practices, budgetary or jurisdictional challenges, and other sector-specific policies that are inhibiting, or could inhibit, the development or deployment of the Internet of Things;

(B) consider policies or programs that encourage and improve coordination among Federal agencies that have responsibilities that are relevant to the objectives of this section;

(C) consider any findings or recommendations made by the IoT Advisory Board and, where appropriate, act to implement those recommendations;

(D) examine—

(i) how Federal agencies can benefit from utilizing the Internet of Things;

(ii) the use of Internet of Things technology by Federal agencies as of the date on which the working group performs the examination;

(iii) the preparedness and ability of Federal agencies to adopt Internet of Things technology as of the date on which the working group performs the examination and in the future; and

(iv) any additional security measures that Federal agencies may need to take to—

(I) safely and securely use the Internet of Things, including measures that ensure the security of critical infrastructure; and

(II) enhance the resiliency of Federal systems against cyber threats to the Internet of Things; and

(E) in carrying out the examinations required under subclauses (I) and (II) of subparagraph (D)(iv), ensure to the maximum extent possible the coordination of the current and future activities of the Federal Government relating to security with respect to the Internet of Things.

The Preliminary Update as presented, is intended to obtain broad comments and feedback to help the IoTFWG build recommendations for future federal actions to encourage the development and deployment of the Internet of Things.

### Request for Comments

NIST seeks public comments on the Preliminary Update electronically from the NIST website at: IoT Federal Working Group | NIST. Written comments may be submitted by mail to Barbara Cuthill, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2000, Gaithersburg, MD 20899. Electronic submissions may be sent to *iotfwg@nist.gov* .

*Authority:* 15 U.S.C. 272(b), (c), & (e); 15 U.S.C. 278g–3.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2023–18251 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

**[Docket No. 230814–0193]**

## Request for Comments on Draft FIPS–203, Draft FIPS–204, and Draft FIPS–205

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The National Institute of Standards and Technology (NIST) requests comments on three draft Federal Information Processing Standards (FIPS): FIPS 203, Module-Lattice-Based Key-Encapsulation Mechanism Standard, FIPS 204, Module-Lattice-Based Digital Signature Standard, and FIPS 205, Stateless Hash-based Digital Signature Standard. These proposed standards specify key establishment and digital signature schemes that are designed to resist future attacks by quantum computers, which threaten the security of current standards. The three algorithms specified in these standards are each derived from different submissions in the NIST post-quantum cryptography standardization project (see: *https://csrc.nist.gov/Projects/post-quantum-cryptography/post-quantum-cryptography-standardization*).

**DATES:** Comments on FIPS 203, FIPS 204, or FIPS 205 must be received on or before November 22, 2023.

**ADDRESSES:** The drafts of FIPS 203, FIPS 204, and FIPS 205 are available for review and comment on the NIST Computer Security Resource Center website at *https://csrc.nist.gov* and at *www.regulations.gov.* Comments on FIPS 203 may be sent electronically to *FIPS-203-comments@nist.gov* with ''Comment on FIPS 203'' in the subject line or submitted via *www.regulations.gov.* Comments on FIPS 204 may be sent electronically to *FIPS-204-comments@nist.gov* with ''Comment on FIPS 204'' in the subject line or via *www.regulations.gov.* Comments on FIPS 205 may be sent electronically to *FIPS-205-comments@nist.gov* with ''Comment on FIPS 205'' in the subject line or via *www.regulations.gov.* Written comments may also be submitted by mail to Information Technology Laboratory, ATTN: FIPS Comments, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930.

All relevant comments received by the deadline will be published electronically at *https://csrc.nist.gov* and *www.regulations.gov* without change or redaction, so commenters should not include information they do not wish to be posted (*e.g.,* personal or confidential business information). Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be posted or considered. After the comment period closes, NIST will analyze the comments, make changes to the documents as appropriate, and then propose the drafts FIPS 203, FIPS 204, and FIPS 205 to the Secretary of Commerce for approval.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dustin Moody, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930, email: *Dustin.Moody@nist.gov,* phone: (301) 975–8136.

**SUPPLEMENTARY INFORMATION:** Over the past several years, there has been steady progress toward building quantum computers. The security of many commonly used public-key cryptosystems would be at risk if large-scale quantum computers were ever realized. In particular, this would include key-establishment schemes and digital signatures that are based on integer factorization and discrete logarithms (both over finite fields and elliptic curves). As a result, in 2017, the National Institute of Standards and Technology (NIST) initiated a public

process to select quantum-resistant public-key cryptographic algorithms for standardization. These quantum-resistant algorithms would augment the public-key cryptographic algorithms already contained in FIPS 186–5, Digital Signature Standard (DSS), as well as NIST Special Publication (SP) 800–56A Revision 3, Recommendation for Pair-Wise Key-Establishment Schemes Using Discrete Logarithm Cryptography, and SP 800–56B Revision 2, Recommendation for Pair-Wise Key Establishment Using Integer Factorization Cryptography.

NIST issued a public call for submissions to the Post-Quantum Cryptography (PQC) Standardization Process in December 2016. Prior to the November 2017 deadline, a total of 82 candidate algorithms were submitted. Shortly thereafter, the 69 candidates that met both the submission requirements and the minimum acceptability criteria were accepted into the first round of the standardization process. Submission packages for the first-round candidates were posted online for public review and comment.

After a year-long review of the candidates, NIST selected 26 algorithms to move on to the second round of evaluation in January 2019. These algorithms were viewed as the most promising candidates for eventual standardization, and were selected based on both internal analysis and public feedback. During the second round, there was continued evaluation by NIST and the broader cryptographic community. After consideration of these analyses and other public input received throughout the evaluation process, NIST selected seven finalists and eight alternates to move on to the third round in July 2020.

The third round began in July 2020 and continued for approximately 18 months. During the third round, there was a more thorough analysis of the theoretical and empirical evidence used to justify the security of the candidates. There was also careful benchmarking of their performance using optimized implementations on a variety of software and hardware platforms. Similar to the first two rounds, NIST also held the (virtual) Third NIST PQC Standardization Conference in June 2021. NIST summarized its decisions in a report at the end of each round; NISTIR 8240 for the first round, NISTIR 8309 for the second round, and NISTIR 8413 for the third round. These reports are available at *https://csrc.nist.gov/publications/ir.*

After three rounds of evaluation and analysis, NIST selected four algorithms it will standardize as a result of the PQC Standardization Process. The public-key encapsulation mechanism selected was CRYSTALS–KYBER, along with three digital signature schemes: CRYSTALS–Dilithium, FALCON, and SPHINCS+. It is intended that these algorithms will be capable of protecting sensitive U.S. Government information well into the foreseeable future, including after the advent of quantum computers.

The draft of FIPS 203 specifies a cryptographic scheme called Module Learning with errors Key Encapsulation Mechanism, or MLWE–KEM, which is derived from the CRYSTALS–KYBER submission. A Key Encapsulation Mechanism (or KEM) is a particular type of key establishment scheme which can be used to establish a shared secret key between two parties communicating over a public channel. Current NIST-approved key establishment schemes are specified in SP 800–56A *Recommendation for Pair-Wise Key-Establishment Schemes Using Discrete Logarithm-Based Cryptography* and SP 800–56B, *Recommendation for Pair-Wise Key Establishment Schemes Using Integer Factorization Cryptography.*

The drafts of FIPS 204 and 205 each specify digital signature schemes, which are used to detect unauthorized modifications to data and to authenticate the identity of the signatory. FIPS 204 specifies the Module Learning with errors Digital Signature Algorithm, or ML–DSA, which is derived from CRYSTALS-Dilithium submission. FIPS 205 specifies the Stateless Hash-based Digital Signature Algorithm, or SLH–DSA, derived from the SPHINCS+ submission. Current NIST-approved digital signature schemes are specified in FIPS 186–5, *Digital Signature Standard* and SP 800–208, *Recommendation for Stateful Hash-based Signature Schemes.* In the future, NIST intends to develop a FIPS specifying a digital signature algorithm derived from FALCON as an additional alternative to these standards.

*Authority:* 40 U.S.C. 11331(f), 15 U.S.C. 278g–3.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2023–18197 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Proposed Voluntary Product Standard PS 1–22, Structural Plywood

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The National Institute of Standards and Technology (NIST) is distributing for public comment a proposed revision of Voluntary Product Standard PS 1–22, *Structural Plywood.* The revisions to the standard were prepared by the Standard Review Committee and approved by the PS 1 Standing Committee. PS 1–22 *Structural Plywood* establishes requirements for the principal types and grades of structural plywood and provides a basis for common understanding among producers, distributors, and users of the product. Interested parties are invited to review the proposed standard and submit comments to NIST.

**DATES:** Written comments regarding the proposed revision, PS 1–22 *Structural Plywood,* should be submitted to the Standards Coordination Office, NIST, no later than September 25, 2023. Written comments should be submitted according to the instructions in the **ADDRESSES** section below. Submissions received after that date may not be considered.

**ADDRESSES:** An electronic copy (an Adobe Acrobat File) of the proposed standard, PS 1–22, *Structural Plywood,* can be obtained at the following website *https://www.nist.gov/standardsgov/voluntary-product-standards-program.* This site also includes an electronic copy of PS 1–19 (the existing standard) and a summary of significant changes. Written comments on the proposed revision should be submitted to Nathalie Rioux, Standards Coordination Office, NIST, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100. Electronic comments may be submitted to *nrioux@nist.gov.*

*Instructions:* Attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. All comments responding to this

document will be a matter of public record. Relevant comments will generally be available during and after the comment period closes on NIST's website at *https://www.nist.gov/standardsgov/voluntary-product-standards-program.* NIST will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

**FOR FURTHER INFORMATION CONTACT:** Nathalie Rioux, Standards Coordination Office, National Institute of Standards and Technology, telephone: (240) 751–6225; email: *nrioux@nist.gov.*

**SUPPLEMENTARY INFORMATION:** Proposed Voluntary Product Standard PS 1–22 *Structural Plywood* establishes requirements, for those who choose to adhere to the standard, for the principal types and grades of structural plywood. This standard covers the wood species, veneer grading, adhesive bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content, and packing of plywood intended for construction and industrial uses.

The proposed revision of the standard, PS 1–22, *Structural Plywood,* has been developed and is being processed in accordance with Department of Commerce provisions in Part 10, Title 15, of the Code of Federal Regulations, *Procedures for the Development of Voluntary Product Standards,* as amended (published June 20, 1986). The Standing Committee for PS 1–22 is responsible for maintaining, revising, and interpreting the standard and is comprised of producers, distributors, users, and others with an interest in the standard.

After reviewing the standard, the Committee determined that updates were needed to reflect current industry practices. The Committee held meetings to review the standard and make needed changes.

The full Committee of 18 members voted on the revision, and it was approved by 94% of the Committee Members. The Committee submitted a report to NIST with the voting results and the draft revised standard. NIST has determined that the revised standard should be issued for public comment.

Proposed Voluntary Product Standard PS 1–22 *Structural Plywood* includes the following revisions:

1. Updated definitions to address Critical Section, Sound Knot, and Tight knot.
2. For species classified by testing Section 5.2.4 clarified that species listed in Table 1 but grown in a different geographic region shall be qualified for use by performance testing.
3. Clarified the requirements under Section 5.7.1 Exposure 1 and 5.7.2 Exterior.
4. Added calculations for planar shear strength Section 6.2.4 and shear-through-the-thickness strength Section 6.2.5.
5. Added Categories 5/16 and 11/16 to Table 10, Table D1, and Table D2.
6. Updated Section 7 Marking and Certification. This includes adding a Section on Accredited Certification Agency; revised Qualified Inspection and Testing Agency Section and added Section on Accredited Inspection Agency and Section on Accredited Testing Laboratory; added a Subsection on Subcontracting.
7. Added Section 8 on Quality Assurance Requirements which included adding the following subsections Manufacturing Quality Program, Inspection and Test Program, Sampling and Corrective Action.

The Standing Committee for PS 1–22 and NIST will revise the standard accordingly.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2023–18257 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket Number: 230710–0163]**

### Request for Information Regarding File Specification for Findable, Accessible, Interoperable, and Reusable (FAIR) Containerized Computational Software (FAIR–CCS)

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of public meetings; request for information.

**SUMMARY:** The National Institute of Standards and Technology (NIST) is evaluating and improving the specification for achieving interoperability of containerized computational software. Adherence to a specification for *Findable, Accessible, Interoperable,* and *Reusable (FAIR)* Containerized Computational Software (FAIR–CCS) enables better reuse of containerized tools in complex data analyses by chaining tools into computational workflows. NIST requests information from the community on approaches to achieving interoperability of containerized software, designing a container manifest file that meets the community needs, and lowering the barrier for constructing such a manifest file. Responses to this RFI will also inform a possible revision of the current approach to achieving FAIR–CCS via a manifest file, the entries in the current manifest file specification of FAIR–CCS, and the current tools that aim at automating adherence to the FAIR–CCS manifest specification. NIST will host a workshop on FAIR–CCS at the times and location indicated below and will discuss the responses to this RFI at the workshop.

**DATES:**

*For Comments:* Comments in response to this RFI must be received by 5:00 p.m. Eastern time on December 7, 2023. Written comments in response to the RFI should be submitted according to the instructions in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections below. Submissions received after that date may not be considered.

*For Public Meetings/Webcast:* A virtual meeting will be held on December 5–7, 2023 from 11 a.m. to 3 p.m. Eastern Time. Requests to participate must be received via the virtual meeting website no later than December 1, 2023.

**ADDRESSES:**

*For Comments:* Responses can be submitted by either of the following methods:

- *Electronic submission:* Submit electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov* and enter [NIST–2023–0003] in the search field,
2. Click the ''Comment Now!'' icon, complete the required fields, and
3. Enter or attach your comments.

- *Email:* Comments in electronic form may also be sent to *wipp-team@nist.gov.* Include ''RFI Response: FAIR–CCS'' in the subject line of the message.

*Instructions:* Attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials.

All comments responding to this document will be a matter of public record. Relevant comments will

generally be available on the Federal eRulemaking Portal at *https://www.Regulations.gov* and, after the comment period closes, on NIST's website at *https://www.nist.gov/news-events/events/2023/12/2nd-international-workshop-fair-containerized-computational-software.* NIST will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals

*For Public Meetings/Webcast:* A December 5–7, 2023 public meeting will be held virtually by NIST. Details about attending the meeting and accessing the video webcast are available at *https://www.nist.gov/news-events/events/2023/12/2nd-international-workshop-fair-containerized-computational-software.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter Bajcsy, Project Lead, Software and Systems Division, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive MS 2201, Gaithersburg, MD 20899, 301–975–2958, or by email to *peter.bajcsy@nist.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

A virtual software container consists of a package of software code with all of the required elements to run regardless of the environment. For example, containers for a containerized application include all of the application's system libraries and configuration files and can run on any host operating system. This process, known as containerization, ensures that applications are portable, scalable, and distributed more efficiently.

The usage of software containers has been around for decades but has gained more popularity within the last ten years. With this increasing popularity of software containers as standardized units for deployment, research communities have adopted the practice of containerizing diverse software components such as algorithms, tools, or modules to run on institutional or commercially available computer cluster, cloud, or high-performance computing (HPC) resources, because running software containers on these platforms provides more opportunity for scalability with minimum resource usage. For example, in biomedical microscopy imaging, stakeholders cope with very large datasets as the advancements in microscope designs and automated acquisition generate terabyte-size image collections in a relative short time span.

Stakeholders also strive to reuse containerized tools and reproduce complex workflow analyses through container-based workflows to improve researchers reproducibility of research processes to increase efficiency, reliability, and collaboration. Accordingly, there is an opportunity in biomedical microscopy imaging to improve the reuse and reproducibility of analyses via specifications of interoperable containerized algorithms (*i.e.,* computational tools or software plugins) in order to create these container-based workflows (*i.e.,* chained containerized algorithms).

Given the complex analyses in working with software containers, heterogeneous file formats and storage mechanisms, a variety of scientific workflow engines, distributed computational and storage environments, and application programming interfaces to metadata registries and ontologies, the stakeholders are expected to be from academia, industry, and government.

**Public Meetings**

A public meeting will be held on December 5–7, 2023 as indicated in the **DATES** and **ADDRESSES** section. Requests to participate must be received via the meeting website at *https://www.nist.gov/news-events/events/2023/12/2nd-international-workshop-fair-containerized-computational-software* by December 1, 2023.

**Request for Information**

Respondents are encouraged—but are not required—to respond to each topic area and to present their responses after each topic area. The following topic areas cover the major areas about which NIST seeks comment. Respondents may organize their submissions in response to this RFI in any manner. Responses may include estimates, which should be identified as such.

All relevant responses that comply with the requirements listed in the **DATES** and **ADDRESSES** sections of this RFI will be considered.

NIST is requesting information related to the following topics:

(1) Approaches to chain containerized computational software.

(2) Important characteristics of sets of containerized computational software for reuse.

(3) Methods to facilitate the characterization of containerized computational software.

(4) Best practices for containerization of computational algorithms and for the interfaces between containerized algorithms accessing datasets in heterogeneous storage environments.

(5) Best practices for finding containerized software tools and container-based workflows in online registries using application programming interfaces (APIs).

(6) Best practices for executing container-based workflows using workflow engines and job schedulers for computational resource management in distributed computational environments.

*Authority:* 15 U.S.C. 272(b) & (c); 15 U.S.C. 278g–3.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2023–18263 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; iEdison System

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 May 4, 2023 date during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Institute of Standards and Technology (NIST), Commerce.

*Title:* iEdison System.

*OMB Control Number* 0693–0090.

*Form Number(s):* None.

*Type of Request:* Regular, Revision of an Existing Collection.

*Number of Respondents:* 3,063.

*Average Hours per Response:*

*Invention Records:* 1.25 (approximately 5 times per year).

*Patent Records:* .75 hours (approximately 5 times per year).

*Utilization Records:* 25 minutes (approximately 30 times per year).

*Burden Hours:*
*Invention Records:* 19,144 hours.
*Patent Records:* 11,486 hours.
*Utilization Records:* 38,288 hours.

*Needs and Uses:* The Bayh-Dole Act (35 U.S.C. 18) and its implementing regulations (37 CFR 401) allow for recipients of Federal research funding (Contractors) to retain ownership of inventions developed under Federal funding agreements. In exchange, the government retains certain rights to the invention, including a world-wide right to use by or on behalf of the U.S. government. The law also requires the Contractor to obtain permission for certain actions and fulfill reporting requirements including:

a. Initial reporting of invention.
b. Decision to retain title to invention.
c. Filing of patent protection.
d. Evidence of government support clause within patents.
e. Submission of a license confirming the government's rights.
f. Notice if the Contractor is going to discontinue the pursuit or continuance of patent protection.
g. Information related to the development and utilization of invention.
h. Permission to assign to a third party; and
i. Permission to waive domestic manufacturing requirements.

This information is used for a variety of reasons. It allows the government to identify technologies to which the government has rights to use without additional payment or licensing. This acts as a time and cost-saving mechanism to avoid unnecessary negotiating and payment. It also provides data for calculation of return on investment (ROI) from Federal funding and identifies successful research programs. Thirdly, it allows the government the opportunity to timely protect inventions which the Contractor declines title or discontinues patent protection. Many agencies utilize the iEdison system, managed by NIST, to collect this information. Agencies that do not register with iEdison are required to collect this information independently.

Historically, only NIH and DOE regularly requested that Contractors submit requests for reports on the development and utilization of an invention (utilization reports) within iEdison. However, there has been an increased interest across the government in the impact of federally funded research and resulting inventions as well as compliance with the Bayh-Dole requirements, especially as it relates to domestic manufacturing requirements. As a result, the interagency working group for Bayh-Dole decided that all agencies would begin to request this information, and the questions would be amended and expanded upon so that the agencies could get a clear picture of the commercialization plans for subject inventions, what the licensing landscape looked like, what products were resulting, and where those products were being manufactured.

Another data point of particular interest across government relates to gender, and specifically how gender disparity may be present within the inventing and commercialization space. Collecting gender of the inventors within iEdison provides agencies previously unavailable data that they may use to conduct assessments under administrative policy guidance outlined in Executive Order 13985. NIST does not anticipate that the collection of this data will significantly affect the reporting burden.

*Affected Public:* Business or other for-profit organizations; Not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain benefits.

*Legal Authority:* The Bayh-Dole Act (35 U.S.C. 18) and its implementing regulations (37 CFR 401); 35 U.S.C. 200–212.

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 the title of the collection.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.*

[FR Doc. 2023–18160 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Advisory Committee on Earthquake Hazards Reduction Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee) will hold an open virtual meeting via web conference on Monday, September 25, 2023, from 1:00 p.m. to 5:00 p.m. Eastern Time. The primary purpose of this meeting is for the Committee to finalize their 2023 Biennial Report on the Effectiveness of the National Earthquake Hazards Reduction Program (NEHRP). The final agenda will be posted on the NEHRP website at *https://nehrp.gov/committees/meetings.htm.*

**DATES:** The ACEHR will meet on Monday, September 25, 2023, from 1:00 p.m. to 5:00 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held via web conference. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Tina Faecke, Management and Program Analyst, NEHRP, Engineering Laboratory, NIST. Ms. Faecke's email address is *tina.faecke@nist.gov* and her phone number is (240) 477–9841.

**SUPPLEMENTARY INFORMATION:** The Committee is composed of 12 members, appointed by the Director of NIST, who were selected for their established records of distinguished service in their professional community, their knowledge of issues affecting NEHRP, and to reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. In addition, the Chairperson of the U.S. Geological Survey Scientific Earthquake Studies Advisory Committee serves as an ex-officio member of the Committee.

Pursuant to FACA, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the ACEHR will meet on Monday, September 25, 2023, from 1:00 p.m. to 5:00 p.m. Eastern Time. The meeting will be open to the public and will be held via web conference. Interested members of the public will be able to participate in the meeting from remote locations. The primary purpose of this meeting is for the Committee to finalize their 2023 Biennial Report on the Effectiveness of NEHRP. The final

agenda will be posted on the NEHRP website at *https://nehrp.gov/committees/meetings.htm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda. Approximately fifteen minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received. This meeting will be recorded. Public comments can be provided via email or by web conference attendance. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to Tina Faecke at *tina.faecke@nist.gov* by 5:00 p.m. Eastern Time, Monday, September 4, 2023. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate are invited to submit written statements electronically by email to *tina.faecke@nist.gov.*

Anyone wishing to attend this meeting via web conference must register by 5:00 p.m. Eastern Time, Monday, September 4, 2023, to attend. Please submit your full name, the organization you represent (if applicable), email address, and phone number to Tina Faecke at *tina.faecke@nist.gov.* After pre-registering, participants will be provided with instructions on how to join the web conference.

*Authority:* 42 U.S.C. 7704(a)(5) and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 1001 *et seq.*

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2023–18258 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD270]**

### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

**ACTION:** Notice of issuance of letter of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to ExxonMobil Corporation (ExxonMobil) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

**DATES:** The LOA is effective from August 18, 2023, through April 1, 2026.

**ADDRESSES:** The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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 issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 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.

Except with respect to certain activities not pertinent here, 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).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

#### Summary of Request and Analysis

ExxonMobil plans to conduct well appraisal and high-resolution engineering geophysical surveys associated with its federal lease blocks within the High Island and Galveston areas. See Figure 1 of the LOA application for a map of the area.

ExxonMobil anticipates using a daily contingent of from one to three source

vessels, depending on the survey stage and ongoing survey requirements. Surveys may be conducted 24 hours per day, but in some instances in shallow water areas will only be conducted for 12 hours per day. Depending on the survey objective, source vessels will tow a Sercel G-Source II dual airgun array of 80 to 150 cubic inches ($in^3$), or may be outfitted with sources such as a multibeam echosounder, side scan sonar, and sparker system (*e.g.,* GeoSource 200–400). During survey effort using non-airgun sources, only the sparker source has the potential to cause incidental take of marine mammals. Please see ExxonMobil's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by ExxonMobil in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

Summary descriptions of modeled survey geometries (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) are available in the preamble to the proposed rule (83 FR 29220, June 22, 2018). In addition, surveys using single airguns and high-resolution geophysical sources were also modeled. The single airgun was selected as the best available proxy survey type in this case, as ExxonMobil plans to conduct survey effort using two single airguns or, alternatively, a sparker system. Although no sparkers were modeled, use of the single airgun as a proxy source is conservative.

The survey will take place over approximately 338 days, within Zone 3 and adjacent state waters. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, the rule acknowledged that other information could be considered (*e.g.,* 86 FR 5442, January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public. For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

In this case, use of the exposure modeling produces results that are smaller than average GOM group sizes for two species (Maze-Foley and Mullin, 2006). NMFS' typical practice in such a situation is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, other relevant considerations here lead to a determination that increasing the estimated exposures to average group sizes would likely lead to an overestimate of actual potential take. In this circumstance, the generally shallow depths (5–50 feet (1.5–15.2 meters)) associated with the survey and relatively small Level B harassment isopleths produced through use of the single airguns or sparker systems mean that it is unlikely that certain species would be encountered at all, much less that the encounter would result in exposure of a greater number of individuals than is estimated through use of the exposure modeling results. As a result, in this case NMFS has not increased the estimated exposure values to assumed average group sizes in authorizing take.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

**Small Numbers Determination**

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in Table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

| Species | Authorized take | Scaled take [1] | Abundance [2] | Percent abundance |
|---|---|---|---|---|
| Rice's whale | 0 | n/a | 51 | n/a |
| Sperm whale | 0 | n/a | 2,207 | n/a |
| *Kogia* spp. | 0 | n/a | 4,373 | n/a |
| Beaked whales | 0 | n/a | 3,768 | n/a |
| Rough-toothed dolphin | 137 | 39.2 | 4,853 | 0.8 |
| Bottlenose dolphin | 4,756 | 1,364.9 | 176,108 | 0.8 |
| Clymene dolphin | 0 | n/a | 11,895 | n/a |
| Atlantic spotted dolphin | 1,685 | n/a | 74,785 | n/a |
| Pantropical spotted dolphin | 0 | n/a | 102,361 | n/a |
| Spinner dolphin | 0 | n/a | 25,114 | n/a |
| Striped dolphin | 0 | n/a | 5,229 | n/a |
| Fraser's dolphin | [3] 1 | 0.2 | 1,665 | 0.0 |
| Risso's dolphin | 0 | n/a | 3,764 | n/a |
| Melon-headed whale | 0 | n/a | 7,003 | n/a |
| Pygmy killer whale | 0 | n/a | 2,126 | n/a |
| False killer whale | [3] 5 | 1.3 | 3,204 | 0.0 |
| Killer whale | 0 | n/a | 267 | n/a |
| Short-finned pilot whale | 0 | n/a | 1,981 | n/a |

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.

[3] Modeled exposure estimate less than assumed average group size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of ExxonMobil's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

## Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to ExxonMobil authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: August 21, 2023.

**Kimberly Damon-Randall,**

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

[FR Doc. 2023–18220 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD271]**

### Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) and its advisory bodies will meet September 7–14, 2023 in Spokane, Washington and via webinar. The Council meeting will be live streamed with the opportunity to provide public comment remotely.

**DATES:** The Pacific Council meeting will begin on Saturday, September 9, 2023, at 9 a.m. Pacific Daylight Time (PDT), reconvening at 8 a.m. on Sunday, September 10 through Thursday, September 14, 2023. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Saturday, September 9, to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

**ADDRESSES:** Meetings of the Pacific Council and its advisory entities will be held at the Doubletree by Hilton Hotel Spokane City Center, 322 N Spokane Falls Court, Spokane, WA; telephone: (509) 455–9600. Specific meeting information, including directions on joining the meeting, connecting to the live stream broadcast, and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. Merrick Burden, Executive Director, Pacific Council; telephone: (503) 820–2418 or (866) 806–7204 toll-free, or access the Pacific Council website, *www.pcouncil.org,* for the proposed agenda and meeting briefing materials.

**SUPPLEMENTARY INFORMATION:** The September 7–14, 2023 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PDT Saturday, September 9, 2023, and 8 a.m. PDT Sunday, September 10 through Thursday, September 14, 2023.

Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see *www.pcouncil.org*).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.3, Proposed Council Meeting Agenda, and will be in the advance September 2023 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Friday, August 18, 2023.

**A. Call to Order**

1. Opening Remarks
2. Roll Call
3. Agenda
4. Executive Director's Report

**B. Open Comment Period**

1. Comments on Non-Agenda Items

**C. Salmon Management**

1. National Marine Fisheries Service Report
2. Methodology Review—Final Topic Selection
3. Fishery Management Plan (FMP) Amendment 24: Southern Resident Killer Whale Chinook Threshold Clarifications

**D. Pacific Halibut Management**

1. Preliminary Catch Sharing Plan and Regulations for Implementation in 2024 or Later

**E. Habitat Issues**

1. Current Habitat Issues

**F. Ecosystem Management**

1. Initiative 4: Ecosystem and Climate Information—Progress Report

**G. Groundfish Management**

1. National Marine Fisheries Service Report
2. Adopt Stock Assessments
3. Stock Assessment Methodology Review—Final Topics
4. Fixed Gear Marking and Entanglement Risk Reduction; Limited Entry and Follow On Actions
5. Cordell Bank Conservation Area Revisions—Scoping
6. Initial Harvest Specifications and Management Measures Actions for 2025–2026
7. Final Trawl Cost Project Phase 1 Report and Next Steps for the Trawl Catch Share and Allocation Reviews
8. Harvest Specifications Technical Corrections and Inseason Adjustments—Final Action

**H. Administrative Matters**

1. Chumash Heritage National Marine Sanctuary Designation
2. Great Farallones and Monterey Bay National Marine Sanctuaries Coral Restoration and Research Plan—Scoping
3. Marine Planning Update
4. Magnuson-Stevens Act Confidentiality Provisions—Proposed Rule *(Cancelled)*
5. National Marine Fisheries Service Geographic Strategic Plan and Regional Equity and Environmental Justice Implementation Plan
6. National Standards 4, 8, 9, Considerations and National Standard 1 Technical Guidance
7. Fiscal Matters
8. Approval of Council Meeting Record
9. Membership Appointments and Council Operating Procedures
10. Future Council Meeting Agenda and Workload Planning

**I. Highly Migratory Species Management**

1. National Marine Fisheries Service Report
2. International Management Activities
3. Exempted Fishing Permits—Final
4. Driftnet Modernization and Bycatch Reduction Act—Transition Update
5. Highly Migratory Species Essential Fish Habitat (EFH) Amendment—Preliminary

**Advisory Body Agendas**

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, *www.pcouncil.org,* no later than Friday, August 18, 2023 by the end of the business day.

**Schedule of Ancillary Meetings**

*Day 1—Thursday, September 7, 2023*

Groundfish Subcommittee Scientific and Statistical Committee—1 p.m.

*Day 2—Friday, September 8, 2023*

Equity and Environmental Justice Committee—8 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Habitat Committee—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Scientific and Statistical Committee—8 a.m.
Budget Committee—1 p.m.
Enforcement Consultants—2 p.m.

*Day 3—Saturday, September 9, 2023*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Ecosystem Advisory Subpanel—8 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Habitat Committee—8 a.m.
Scientific and Statistical Committee—8 a.m.
Enforcement Consultants—As Necessary

*Day 4—Sunday, September 10, 2023*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Enforcement Consultants—As Necessary

*Day 5—Monday, September 11, 2023*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Enforcement Consultants—As Necessary

*Day 6—Tuesday, September 12, 2023*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Enforcement Consultants—As Necessary

*Day 7—Wednesday, September 13, 2023*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Enforcement Consultants—As Necessary

*Day 8—Thursday, September 14, 2023*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: August 18, 2023.

**Rey Israel Marquez,**

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

[FR Doc. 2023–18195 Filed 8–23–23; 8:45 am]

**BILLING CODE 3510–22–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[Docket No. CPSC–2023–0032]**

## Notice of Availability: Proposed Supplemental Guidance for CPSC Chronic Hazard Guidelines

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** The Consumer Product Safety Commission (Commission or CPSC) is announcing the availability of proposed supplemental guidance for its Chronic Hazard Guidelines. The supplements are draft supplemental guidance for the use of benchmark dose methodology in risk assessment, and draft supplemental guidance for the analysis of uncertainty and variability in risk assessment. The Commission requests comments from the public on the proposed supplemental guidance.

**DATES:** Submit comments by October 23, 2023.

**ADDRESSES:** You can submit comments, identified by Docket No. CPSC–2023–0032 by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

*Mail/Hand Delivery/Courier/Confidential Written Submissions:* CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

*Instructions:* All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided to *www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to *www.regulations.gov,* and insert the docket number, CPSC–2023–0032 into the ''Search'' box, and follow the prompts. The proposed supplemental guidance is available under ''Supporting and Related Material.'' It is also available on the Commission's website at: *https://www.cpsc.gov/Newsroom/FOIA/ReportList?month=07&year=2023&nfr_type=commission&title,* and from the Commission's Office of the Secretary.

**FOR FURTHER INFORMATION CONTACT:** Eric Hooker, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2516; email: *ehooker@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Background**

In 1992 the Commission issued guidelines for assessing chronic hazards under the Federal Hazardous Substances Act (FHSA), including carcinogenicity, neurotoxicity, reproductive/developmental toxicity, exposure, bioavailability, risk assessment, and acceptable risk.

Determining whether a product is or contains a hazardous substance involves scientific analysis, legal interpretation, and the application of policy judgment. The Guidelines are intended to assist firms in identifying products that present chronic hazards, to meet their labeling obligations under the FHSA and the Labeling of Hazardous Art Materials Act (LHAMA). They are not binding on industry or the Commission. Indeed, chronic toxicity may be established in various ways. The Commission may determine that a product is a hazardous substance due to a chronic hazard based on any evidence that is relevant and material to such a determination.

For example, peer-reviewed scientific studies by third parties and toxicity assessments from CPSC's peer agencies may be relevant and material evidence to establish chronic toxicity and that a substance is a ''hazardous substance'' under the FHSA. Likewise, evidence from third parties may be useful to determine chronic toxicity. For instance, third party studies may indicate that chronic adverse health effects are associated with foreseeable levels of consumer exposure, allowing the Commission to conclude that the FHSA's criteria for a ''hazardous substance'' are satisfied. Other cases, however, may require CPSC to undertake original research to fill gaps in knowledge.

In addition, while the Guidelines describe certain toxic endpoints, they do not limit the toxic endpoints the Commission may consider. The Commission may consider all forms of personal injury or illness as potential toxic endpoints.

The chronic hazard guidelines, which should be understood as a set of best practices, are not mandatory for the Commission or for stakeholders. The guidelines describe methods that CPSC staff may use to assess chronic hazards under the FHSA. Furthermore, the guidelines are intended to be sufficiently flexible to incorporate the latest scientific information, such as advances in risk assessment methodology. Risk assessors may deviate from the default assumptions described in the guidelines, provided that their methods and assumptions are

documented, scientifically defensible, and supported by appropriate data as indicated in section VI.A.2 of the preamble of the guidelines. However, given that the guidelines represent an available set of best practices, risk assessors are encouraged to use the information and approaches outlined therein where appropriate.

In the years since the guidelines were issued, there have been numerous advances in the basic science underlying the guidelines, such as the use of transgenic animals to elucidate mechanisms of carcinogenicity and toxicity. There also have been several changes in the practice of risk assessment, including wider acceptance and use of risk assessment methods such as the benchmark dose approach and probabilistic exposure assessment. Therefore, CPSC is proposing two guidance documents to supplement the 1992 guidelines.[1]

The first supplement provides guidance for the application of benchmark dose methodology (BMD) to risk assessment. This supplement discusses an alternative to the traditional approach described in the original guidelines for estimating acceptable daily intakes (ADIs) for carcinogenic and other hazards, such as neurotoxicological or reproductive/developmental hazards. The second supplement is guidance for the analysis of uncertainty and variability, including use of probabilistic risk assessment methodology, which is most relevant to exposure assessment.

Like the 1992 guidelines, the proposed supplemental guidance documents are not mandatory. Rather, they describe methods that CPSC staff and manufacturers may use to evaluate chronic hazards. The guidelines are intended to assist manufacturers in complying with the requirements of the FHSA and to facilitate the use of reliable risk assessment methodologies by both manufacturers and CPSC staff.

### B. Request for Comments

The Commission invites comments on the proposed guidance supplementing CPSC's Chronic Hazard Guidelines with respect to the use of benchmark dose methodology in risk assessment and analysis of uncertainty and variability in risk assessment.

The CPSC will consider all timely comments before finalizing the supplemental guidance. Comments should be submitted by October 23, 2023. Information on how to submit comments can be found in the **ADDRESSES** section of this notice.

*Authority:* 15 U.S.C. 2079(a); 15 U.S.C. 1261; 15 U.S.C. 1277.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2023–16844 Filed 8–23–23; 8:45 am]

**BILLING CODE 6355–01–P**

[1] The proposed guidance documents are available at: *https://www.cpsc.gov/s3fs-public/Federal-Register-Notice-of-Availability-of-Proposed-Supplemental-Guidance-for-CPSC-Chronic-Hazard-Guidelines.pdf?VersionId=dzserzX2mvO8.sO_Q7Thdcb8YufASIsr.*

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0102]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Survey on Use of Funds Under Title II, Part A

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

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

**DATES:** Interested persons are invited to submit comments on or before September 25, 2023.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Elizabeth Witt, 202–260–5585.

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

*Title of Collection:* Survey on Use of Funds Under Title II, Part A.

*OMB Control Number:* 1810–0756.

*Type of Review:* An extension without change of a currently approved ICR.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 52.

*Total Estimated Number of Annual Burden Hours:* 416.

*Abstract:* The U.S. Department of Education (the Department) is requesting an extension of the 1810–0756 information collection to continue collecting data from states annually about how title II, Part A funds are used; how funds are used to improve equitable access to teachers for-low income and minority students; and where applicable, evaluation and retention data for teachers, principals, and other school leaders. The reporting requirements are outlined in section 2104(a) of the Elementary and Secondary Education Act (ESEA), as authorized by the Every Student Succeeds Act of 2015 (ESSA). The survey will include the universe of states, the District of Columbia, and Puerto Rico. The information obtained from the survey will provide the Department with a description of how Title II, Part A State activities funds are used by teach State. In addition, the survey will provide data on teacher, principal, and other school leader evaluation and retention. The survey will be sent to State Title II, Part A coordinators in each of the 50 states, District of Columbia, and Puerto Rico. The survey will be administered using an electronic instrument.

Dated: August 21, 2023.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–18233 Filed 8–23–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Tests Determined To Be Suitable for Use in the National Reporting System for Adult Education; Correction

**AGENCY:** Office of Career, Technical, and Adult Education, Department of Education.

**ACTION:** Notice; correction.

**SUMMARY:** On July 13, 2023, the Department of Education (Department) published a notice announcing tests, test forms, and delivery formats that the Secretary determined to be suitable for use in the National Reporting System for Adult Education (NRS). This notice corrects the name of one test. All other information in the notice remains the same.

**DATES:** This correction is applicable August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** John LeMaster, Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 245–6218. Email: *John.LeMaster@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

**SUPPLEMENTARY INFORMATION:** On July 13, 2023, the Department published a notice announcing tests, test forms, and delivery formats that the Secretary determined to be suitable for use in the NRS (88 FR 44784). We are correcting the name of one test listed in the July 13, 2023, notice from ''Comprehensive Adult Student Assessment System (CASAS) Math GOALS Series'' to ''Comprehensive Adult Student Assessment System (CASAS) Math GOALS 2.''

#### Corrections

In FR Doc. No. 2023–14825, appearing on pages 44784–44786 of the **Federal Register** of July 13, 2023, we make the following correction:

On page 44785, in the third column, beginning in the sixth line, we remove ''*Comprehensive Adult Student Assessment System (CASAS) Math GOALS Series*'' and, in its place, add ''*Comprehensive Adult Student Assessment System (CASAS) Math GOALS 2*''.

*Program Authority:* 29 U.S.C. 3292.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Amy Loyd,**

*Assistant Secretary for Career, Technical, and Adult Education.*

[FR Doc. 2023–18200 Filed 8–23–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP23–528–000]**

### Midwestern Gas Transmission Company; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on August 10, 2023, Midwestern Gas Transmission Company (Midwestern), 100 West Fifth Street, Tulsa, Oklahoma 74105, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), and Midwestern's blanket certificate issued in Docket No. CP82–414–000, for authorization to increase southbound transportation capability along Midwestern's existing mainline by adding pressure control at two existing mainline valve sites and modifying Midwestern's existing Hartford Compressor Station to allow for bi-directional flow. All of the above facilities are located in Edgar and Vermilion Counties, Illinois, and Ohio County, Kentucky (MGT Southbound Project). The project will allow Midwestern to add an incremental expansion capacity of 158,000 dekatherms per day of firm transportation service on Midwestern's mainline. The estimated cost for the project is $6,400,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to: Denise Adams, Director, Regulatory Affairs, Midwestern Gas Transmission Company, 100 West 5th Street, ONEOK Plaza, Tulsa, Oklahoma 74103, by phone at 918–732–1408 or by email at *regulatoryaffairs@oneok.com.*

#### Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on October 17, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

#### Protests

Pursuant to section 157.205 of the Commission's regulations under the

NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is October 17, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

**Interventions**

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is October 17, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Comments**

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 17, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

**How to File Protests, Interventions, and Comments**

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–528–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–528–000.

*To file via USPS:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

*To file via any other method:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Denise Adams, Director, Regulatory Affairs, Midwestern Gas Transmission Company, 100 West 5th Street, ONEOK Plaza, Tulsa, Oklahoma 74103, or by email at *regulatoryaffairs@oneok.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: August 18, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–18256 Filed 8–23–23; 8:45 am]

**BILLING CODE 6717–01–P**

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP23–969–000.

*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* § 4(d) Rate Filing: TPC 2023–08–18 GT&C Section 3 Revision to be effective 9/18/2023.

*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5078.
*Comment Date:* 5 pm ET 8/30/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 18, 2023.

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 18, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–18254 Filed 8–23–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER22–2867–004.
*Applicants:* Bluegrass Solar, LLC.
*Description:* Compliance filing: Revised Rate Schedule After Commercial Operation to be effective 10/1/2022.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5114.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2649–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Interconnection Reliability Operating Limit Critical Resource Cost Recovery to be effective 10/18/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5039.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2650–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: Revisions to Attachment AE to Define Aggregator of Retail Customers to be effective 10/18/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5045.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2651–000.
*Applicants:* Midcontinent Independent System Operator, Inc., Union Electric Company.
*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii) 2023–08–18_SA 4154 UEC–MEC–AECI TIA to be effective 10/18/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5070.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2652–000.
*Applicants:* Georgia Power Company.
*Description:* Tariff Amendment: SR Cedar Springs Affected System Construction Agt (GPAS 015) Termination Filing to be effective 10/17/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5088.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2653–000.
*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) Wirth Forestry Solar LGIA Filing to be effective 8/7/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5090.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2654–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Revisions to OA, Sch. 12 & RAA, Sch. 17 for 1 & 2Q 2023 re: Member Lists to be effective 6/30/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5102.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2655–000.
*Applicants:* Northern Indiana Public Service Company LLC.
*Description:* § 205(d) Rate Filing: Green Acres CIAC to be effective 8/15/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5111.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2656–000.
*Applicants:* Louisville Gas and Electric Company.
*Description:* Compliance filing: Remand Compliance Filing LGE and KU Joint Rate Schedule FERC No. 525 to be effective 12/31/9998.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5118.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2657–000.
*Applicants:* Emera Energy LNG, LLC.
*Description:* § 205(d) Rate Filing: Emera Energy LNG, LLC—Amended Market-Based Rate Tariff to be effective 10/18/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5160.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2658–000.
*Applicants:* Emera Energy Services Subsidiary No. 11 LLC.
*Description:* § 205(d) Rate Filing: Emera Energy Services Subsidiary No. 11—Amended Market-Based Rate Tariff to be effective 10/18/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5163
*Comment Date:* 5 p.m. ET 9/8/23

*Docket Numbers:* ER23–2659–000.
*Applicants:* Emera Energy Services Subsidiary No. 12 LLC.
*Description:* § 205(d) Rate Filing: Emera Energy Services Subsidiary No. 12—Amended Market-Based Rate Tariff to be effective 10/18/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5169.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2660–000.
*Applicants:* Emera Energy Services Subsidiary No. 13 LLC.
*Description:* § 205(d) Rate Filing: Emera Energy Services Subsidiary No. 13—Amended Market-Based Rate Tariff to be effective 10/18/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5173.
*Comment Date:* 5 p.m. ET 9/8/23.

*Docket Numbers:* ER23–2661–000.
*Applicants:* Emera Energy Services Subsidiary No. 15 LLC.
*Description:* § 205(d) Rate Filing: Emera Energy Services Subsidiary No. 15—Amended Market-Based Rate Tariff to be effective 10/18/2023.
*Filed Date:* 8/18/23.
*Accession Number:* 20230818–5177.

*Comment Date:* 5 p.m. ET 9/8/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at:*http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: August 18, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–18255 Filed 8–23–23; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–11350–01–OAR]**

## Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability.

**SUMMARY:** Under the Cross-State Air Pollution Rule (CSAPR) trading program regulations, EPA allocates emission allowances to existing electricity generating units (EGUs) as provided in notices of data availability (NODAs). Through this NODA, EPA is providing notice of the availability of data on new or revised default allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances to existing units for the 2023–2025 control periods, as well as the data upon which the allocations are based.

**DATES:** August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Garrett Powers, Clean Air Markets Division, Office of Atmospheric Protection, Office of Air and Radiation, U.S. Environmental Protection Agency, Mail Code 6204A, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone: 202–564–2300; *email: powers.jamesg@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Good Neighbor Plan,[1] EPA expanded the CSAPR $NO_X$ Ozone Season Group 3 Trading Program [2] to include EGUs in 10 additional states and updated the program's provisions to achieve further emissions reductions.[3] The rule's required emissions control stringencies are reflected in new or revised state emissions budgets which in turn necessitate new or revised unit-level allowance allocations. Beginning with the 2024 control period, each covered state has the option to determine how the CSAPR $NO_X$ Ozone Season Group 3 allowances in its state emissions budget should be allocated among the state's units through a state implementation plan (SIP) revision.[4] However, for the 2023 control period, and by default for subsequent control periods for which a state has not provided EPA with the state's own allocations pursuant to an approved SIP revision, the unit-level allocations are determined by EPA.

Under EPA's default unit-level allocation methodology for the Good Neighbor Plan, most EGUs within a covered state's borders are treated as ''existing'' units and receive allocations of allowances for a given control period in advance of the control period.[5] If any of the existing units are located in areas of Indian country within the state's borders that are not subject to the state's SIP authority, the default allocations to those existing units are made through an ''Indian country existing unit set-aside'' in parallel with the default allocations to the other existing units.[6] The EGUs that EPA identified in the rulemaking as eligible to receive default allocations as existing units for the 2023–2025 control periods in the states covered by this NODA are listed in the spreadsheet referenced later in this notice. EGUs located anywhere within a state's borders that do not receive allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances as ''existing'' units and that report emissions subject to allowance holding requirements for a given control period are eligible to receive allowance allocations as ''new'' units from the state's new unit set-aside for that control period.[7]

EPA determined new and revised state emissions budgets for the 2023–2025 control periods on a full-season basis in the Good Neighbor Plan rulemaking. However, because the Agency anticipated that the rule's effective date could fall after the start of the 2023 ozone season, the final regulations include a procedure for prorating the 2023 state emissions budgets to ensure that the enhanced control stringency reflected in the Good Neighbor Plan's full-season 2023 state emissions budgets will apply only after the rule's effective date.[8] The Good Neighbor Plan provided that the 2023 unit-level allocations would be computed by applying the rule's unit-level allocation methodology to the 2023 state emissions budgets determined through the prorating procedure.[9]

Through this NODA, EPA is providing notice of the availability of data concerning the default unit-level allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances to existing units for the 2023, 2024, and 2025 control periods. The allocations are shown in an Excel spreadsheet entitled ''Unit-level Allocations and Underlying Data for the Final Rule'' posted on

[1] Federal ''Good Neighbor Plan'' for the 2015 Ozone National Ambient Air Quality Standards, 88 FR 36654 (June 5, 2023).

[2] The CSAPR $NO_X$ Ozone Season Group 3 Trading Program was originally established in the Revised CSAPR Update (86 FR 23054, April 30, 2021) as a mechanism for EGUs in 12 states to reduce ozone season emissions of nitrogen oxides ($NO_X$) starting in 2021.

[3] Some courts have issued preliminary orders partially staying the effectiveness of a separate EPA action (88 FR 9336, February 13, 2023) which disapproves state implementation plans addressing good neighbor obligations for several states, and EPA is taking measures to comply with those orders. The description of the Good Neighbor Plan in this NODA reflects the rule as published, without regard to the stay orders and the measures EPA is taking to comply with them. However, EPA will not record allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances to any EGUs that are not currently participating in the CSAPR $NO_X$ Ozone Season Group 3 Trading Program because of the measures EPA is taking to comply with the stay orders. Consequently, the spreadsheet referenced in this NODA has been edited to remove information on unit-level allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances to units in any state covered by a stay order when the NODA was signed.

[4] *See* 40 CFR 52.38(b)(10) through (12).

[5] *See* 40 CFR 97.1011.

[6] *See* 40 CFR 97.1010(b).

[7] *See* 40 CFR 97.1010(c) and 97.1012. Allocations from a state's new unit set-aside for a given control period are made after the respective control period and are not addressed in this notice.

[8] *See* 40 CFR 97.1010(a)(1)(ii).

[9] *See* 88 FR 36811–13.

EPA's website at *www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs.* The spreadsheet also contains the data upon which the allocations are based, including the 2023 state emissions budgets that EPA has computed according to the prorating procedure in the regulations. The spreadsheet is an update of an earlier version included in the docket for the final Good Neighbor Plan which showed the allocations for the 2024 and 2025 control periods as well as illustrative allocations for the 2023 control period. All allocations have been determined according to the allocation methodology finalized in the Good Neighbor Plan rulemaking.[10] EPA is not requesting comment on the allocations, the underlying data, or the allocation methodology.

In accordance with the deadlines set forth in the regulations, EPA will record allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances to existing units for the 2023 control period by September 5, 2023.[11] EPA will also record allocations to existing units for the 2024 control period by that same date except in instances where a state has provided EPA with timely notice of the state's intent to submit a SIP revision with state-determined allowance allocations replacing EPA's default allocations for the 2024 control period.[12] However, in the case of any source that has not yet fully complied with the Good Neighbor Plan's requirements concerning the recall of CSAPR $NO_X$ Ozone Season Group 2 allowances allocated for control periods after 2022, recordation of CSAPR $NO_X$ Ozone Season Group 3 allowances will be deferred until the source has fully complied with the recall requirements.[13] EPA will record allocations of CSAPR $NO_X$ Ozone Season Group 3 allowances to existing units for the 2025 control period by July 1, 2024.[14]

EPA notes that an allocation or lack of allocation of emission allowances to a given unit under a CSAPR trading program does not constitute a determination that the trading program does or does not apply to the unit.[15] EPA also notes that allocations are subject to potential correction or termination under the regulations.[16]

*Authority:* 40 CFR 97.1011(a)(1) and (2).

**Rona Birnbaum,**

*Director, Clean Air Markets Division, Office of Atmospheric Protection, Office of Air and Radiation.*

[FR Doc. 2023–18214 Filed 8–23–23; 8:45 am]

**BILLING CODE 6560–50–P**

[10] *See* Allowance Allocation under the Final Rule TSD, EPA–HQ–OAR–2021–0668–1079, available at *www.regulations.gov* and *www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs; see also* 88 FR 36805–07.

[11] *See* 40 CFR 97.1021(d) and (g).

[12] *See* 40 CFR 97.1021(e).

[13] *See* 40 CFR 97.1021(m); *see also* 40 CFR 97.811(e).

[14] *See* 40 CFR 97.1021(f) and (h).

[15] *See* 40 CFR 97.1011(a)(3).

[16] *See* 40 CFR 97.1011(c).

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–11116–01–OMS]**

### Good Neighbor Environmental Board

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Under the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) gives notice of a public meeting of the Good Neighbor Environmental Board (GNEB). The purpose of this meeting is for the board to continue developing its working draft of the 20th comprehensive report on water and wastewater infrastructure issues and challenges along the U.S.-Mexico border region.

**DATES:** September 21, 2023, from 9:00 a.m.–5:00 p.m. (PDT). A copy of the agenda will be posted at *www.epa.gov/faca/gneb.*

The meeting will be conducted in a hybrid environment and is open to the public with limited access available on a first-come, first-served basis. Members of the public wishing to participate should contact Eugene Green at *green.eugene@epa.gov* by September 14th.

Requests to make oral comments or submit written public comments to the board, should also be directed to Eugene Green at least five business days prior to the meeting. Requests for accessibility and/or accommodations for individuals with disabilities should be directed to Eugene Green at the email address or phone number listed below. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the meeting.

**SUPPLEMENTARY INFORMATION:** The GNEB is an independent federal advisory committee chartered under the Federal Advisory Committee Act, Public Law 92–463. Its mission is to advise the President and Congress of the United States on good neighbor practices along the U.S. border with Mexico. Its recommendations are focused on environmental infrastructure needs within the U.S. states contiguous to Mexico.

For further information regarding the GNEB meeting, please contact Eugene Green at (202) 564–2432 or via email at *green.eugene@epa.gov.*

Dated: August 18, 2023.

**Eugene Green,**

*Program Analyst.*

[FR Doc. 2023–18265 Filed 8–23–23; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK

**[Public Notice: EIB–2023–0011]**

### Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP755224XX

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public the Export-Import Bank of the United States (''EXIM'') has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

**DATES:** Comments must be received on or before September 18, 2023 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

**ADDRESSES:** Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2023–0011 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2023–0011 on any attached document.

**SUPPLEMENTARY INFORMATION:**

*Reference:* AP755224XX.

*Purpose and Use:*

*Brief description of the purpose of the transaction:* The construction of bridges and associated infrastructure at 186 sites, distributed throughout eighteen provinces in Angola.

*Brief non-proprietary description of the anticipated use of the items being exported:* This project will repair and modernize water crossings to improve the quality of life, increase productivity, and facilitate economic development in Angola. Due to this project, many Angolans will no longer have to rely on

dangerous crossings, ropes, or boats to ferry goods and people across waterways.

*Parties:*

*Principal Supplier:* Acrow Corporation of America.

*Obligor:* Ministry of Finance of the Republic of Angola.

*Guarantor(s):* None.

*Description of Items Being Exported:* 186 modular steel panel bridges and ancillary bridging equipment, as well as technical training and advisory services.

*Information on Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*.

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

*Authority:* Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

**Joyce B. Stone,**

*Assistant Corporate Secretary.*

[FR Doc. 2023–18249 Filed 8–23–23; 8:45 am]

**BILLING CODE 6690–01–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 regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 25, 2023.

A. *Federal Reserve Bank of New York* (Ivan J. Hurwitz, Head of Bank Applications) 33 Liberty Street, New York, New York 10045–0001. Comments can also be electronically sent to *comments.applications@ny.frb.org:*

1. *Helios Bancorp Inc.;* to become a bank holding company by acquiring Alpine Capital Bank, both of New York, New York.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2023–18223 Filed 8–23–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Database.'' In accordance with the Paperwork Reduction Act of 1995, AHRQ invites the public to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by October 23, 2023.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Database*

AHRQ requests that OMB reapprove AHRQ's collection of information for the AHRQ Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Database: OMB Control number 0935–0165, expiration November 30, 2023 (the CAHPS Health Plan Database). The CAHPS Health Plan Database consists of data from the AHRQ CAHPS Health Plan Survey. Health plans in the U.S. are asked to voluntarily submit data from the survey to AHRQ, through its contractor, Westat. The CAHPS Health Plan Database was developed by AHRQ in 1998 in response to requests from health plans, purchasers, and the Centers for Medicare & Medicaid Services (CMS) to provide comparative data to support public reporting of health plan ratings, health plan accreditation and quality improvement.

This research has the following goals:

(1) To maintain the CAHPS Health Plan Database using data from AHRQ's standardized CAHPS Health Plan Survey to provide results to health care purchasers, consumers, regulators and policy makers across the country.

(2) To offer several products and services, including aggregated results presented through an Online Reporting System, summary chartbooks, custom analyses, and data for research purposes.

(3) To provide data for AHRQ's annual National Healthcare Quality and Disparities Report.

(4) To provide state-level data to CMS for public reporting on *Medicaid.gov* and *Data.Medicaid.gov* that does not display the name of the health plans.

Survey data from the CAHPS Health Plan Database is used to produce four types of products: (1) An annual chartbook available to the public on the CAHPS Database website (*https://www.ahrq.gov/sites/default/files/wysiwyg/cahps/cahps-database/2022-hp-chartbook.pdf*)); (2) individual participant reports that are confidential and customized for each participating organization (*e.g.,* health plan, Medicaid agency) that submits their data; (3) a research database available to researchers wanting to conduct additional analyses; and (4) data tables provided to AHRQ for inclusion in the National Healthcare Quality and Disparities Reports.

This study is being conducted by AHRQ through its contractor, Westat,

pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services; quality measurement and development, and database development. 42 U.S.C. 299a(a)(1), (2) and (8).

**Method of Collection**

To achieve the goals of this project the following activities and data collections will be implemented:

- Registration Form—The point-of-contact (POC), often the sponsor from Medicaid agencies and health plans, completes a number of data submission steps and forms, beginning with the completion of the online registration form. The purpose of this form is to collect basic contact information about the organization and initiate the registration process.
- Health Plan Information Form—The purpose of this form, completed by the participating sponsor organization, is to collect background characteristics of the health plan.
- Data Use Agreement—The purpose of the data use agreement, completed by the participating sponsor organization, is to state how data submitted by health plans will be used and provide confidentiality assurances.
- Data Files Submission—POCs upload their data file using the Health Plan data file specifications to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated burden hours for the respondent to participate in the database. The burden hours pertain only to the collection of Medicaid data from State Medicaid agencies and individual Medicaid health plans because those are the only entities that submit data through the data submission process. The 125 POCs in Exhibit 1 are a combination of an estimated 115 State Medicaid agencies and individual health plans (Sponsors), and 10 vendor organizations.

Each sponsor, which is made up of State Medicaid agencies and individual health plans, and vendor will register online for submission. The online Registration form will require about 5 minutes to complete. Each sponsor will also complete a Health Plan information form of information about each Health Plan such as the name of the plan, the product type (*e.g.,* HMO, PPO), the population surveyed (*e.g.,* adult Medicaid or child Medicaid). Each year, the prior year's plan data are preloaded in the plan table to lessen burden on the Sponsor. The Sponsor is responsible for updating the plan table to reflect the current year's plan information. The online Health Plan Information form takes on average 30 minutes to complete per health plan with each POC completing the form for four plans on average. The Data Use Agreement (DUA) will be completed by the 115 participating State Medicaid agencies or individual health plans. Vendors do not sign or submit DUAs. The DUA requires about 5 minutes to sign and upload. Each submitter will provide a copy of their questionnaire and the survey data file in the required file format. Survey data files must conform to the data file layout specifications provided by the CAHPS Database. Submitters will upload one data file per health plan. Once a data file is uploaded the file will be checked automatically to ensure it conforms to the specifications and a data file status report will be produced and made available to the submitter. Submitters will review each report and will be expected to fix any errors in their data file and resubmit if necessary. It will take about 1 hour to submit the data for each plan, and each POC will submit data for four plans on average. The total burden is estimated to be 710 hours annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents/ POCs | Number of responses per POC | Hours per response | Total burden hours |
|---|---|---|---|---|
| Registration Form | 125 | 1 | 5/60 | 10 |
| Health Plan Information Form | 115 | 4 | 30/60 | 230 |
| Data Use Agreement | 115 | 1 | 5/60 | 10 |
| Data Files Submission | 115 | 4 | 1 | 460 |
| Total | 470 | NA | NA | 710 |

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to complete one submission process. The cost burden is estimated to be $36,222 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of respondents | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Registration Form | 125 | 10 | [a] 57.61 | $576 |
| Health Plan Information Form | 115 | 230 | [a] 57.61 | 13,250 |
| Data Use Agreement | 115 | 10 | [b] 102.41 | 1,024 |
| Data Files Submission | 115 | 460 | [c] 46.46 | 21,372 |
| Total | 470 | 710 | NA | 36,222 |

* National Compensation Survey: Occupational wages in the United States May 2021, ''U.S. Department of Labor, Bureau of Labor Statistics.''
[a] Based on the mean hourly wage for Medical and Health Services Managers (11–9111).
[b] Based on the mean hourly wage for Chief Executives (11–1011).
[c] Based on the mean hourly wages for Computer Programmers (15–1251).

**Request for Comments**

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 21, 2023.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2023–18221 Filed 8–23–23; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2022–D–0588]**

## Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice for Blood and Blood Components and Reducing the Risk of Transfusion-Transmitted Infections

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by September 25, 2023.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0116. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Current Good Manufacturing Practice for Blood and Blood Components and Reducing the Risk of Transfusion-Transmitted Infections

*OMB Control Number 0910–0116—Revision*

This information collection helps support FDA implementation of statutory and regulatory requirements that govern current good manufacturing practice (CGMP) for blood and blood components. We have issued regulations in parts 606, 610, 630, and 640 (21 CFR parts 606, 610, 630, and 640) setting forth applicable standards and procedures that include associated reporting, recordkeeping, and disclosure requirements. Respondents to the collection of information are licensed and registered-only establishments that collect blood and blood components intended for transfusion or further manufacturing use. We provide information on our website at *https://www.fda.gov/vaccines-blood-biologics/blood-blood-products* regarding CGMP for blood and blood products, including available Agency resources.

We are revising the information collection to support implementation of annual reporting to FDA of the release of unsuitable blood donations from establishments that intend for their activities to fall under the compliance policy set forth in the draft guidance for industry entitled ''Compliance Policy Regarding Blood and Blood Component Donation Suitability, Donor Eligibility and Source Plasma Quarantine Hold Requirements'' (May 2022). The draft guidance describes FDA's compliance policy for certain regulations. Blood establishments that collect blood and blood components, including Source Plasma, must comply with requirements in § 630.30 regarding donation suitability. However, the draft guidance explains the conditions under which FDA does not intend to take regulatory action for a blood establishment's failure to comply with this requirement and describes proposed procedures for such an establishment's filing of annual reports on the release of unsuitable donations to FDA. Specifically, under this policy, when finalized, when the donation is otherwise suitable under § 630.30(a), FDA does not intend to take regulatory action if blood establishments release donations for transfusion or further manufacture when the review of records, required after donation under § 630.30(a)(2), identifies the donation as unsuitable because of inadvertent failure to follow procedures to ensure that the donation would not adversely affect the health of the donor, namely for:

- blood pressure (§ 630.10(f)(2));
- pulse (§ 630.10(f)(4));
- weight (§ 630.10(f)(5));
- donation frequency for Whole Blood and Red Blood Cells collected by apheresis (§ 630.15(a)(1));
- pregnancy (§ 630.10(e)(2)(v)); and
- red blood cell loss for plasma collected by plasmapheresis (§ 630.15(b)(6)).

The draft guidance sets forth that FDA intends to apply the compliance policy provided blood establishments that elect to release unsuitable units as described in the guidance report the release of unsuitable donations to FDA annually. The draft guidance document is available for download at *https://www.fda.gov/media/158608/download.* We issued the guidance document consistent with our Good Guidance Practice regulations in 21 CFR 10.115, which provide for public comment at any time. We intend on finalizing the guidance document upon OMB approval of the attendant information collection. When finalized, the guidance will supersede the guidance entitled, ''Alternative Procedures for Blood and Blood Components During the COVID–19 Public Health Emergency; Guidance for Industry,'' dated April 2020.

As explained in section III.A of the guidance, licensed and registered-only blood establishments must maintain records as required under § 606.160; investigate the error that resulted in the collection of an unsuitable donation under § 630.30(a)(2); and submit a report to FDA annually if they intend for their activities to fall under this

compliance policy. The report should describe the number and type of donations released under these conditions. The report should also describe the corrective actions taken to prevent recurrence of errors and to ensure compliance with the applicable regulations. The final guidance will clarify that the report may be submitted in summary format.

The submission of these reports will allow us to monitor error rates associated with the collection of unsuitable units and work with establishments to implement corrective actions, if necessary. We expect that this compliance policy will increase the availability of blood and blood components, including Source Plasma, while maintaining the health of blood donors and the safety of blood and blood components. If, based upon the available scientific evidence, the risk to the safety of the blood supply or the risk to donors' health significantly changes, FDA may revise this compliance policy as warranted.

In the **Federal Register** of May 24, 2022 (87 FR 31440), we published a 60-day notice requesting public comment on the proposed collection of information. We received six comment letters, each of which contained multiple comments, in response to the notice. Some comments were not responsive to the four information collection topics solicited.

(Comment 1) With regard to the statement in the draft guidance that ''licensed and registered-only blood establishments must maintain records as required under 21 CFR 606.160; investigate the error that resulted in the collection of an unsuitable donation under 21 CFR 630.30(a)(2); and submit a report to FDA annually if they intend for their activities to fall under this compliance policy,'' one comment asked that we clarify whether post-donation information (PDI) related to blood pressure, pulse, weight, and red blood cell loss would need to be investigated and reported to us in the report on an annual basis.

(Response 1) PDI is information received by the blood establishment after donation from the donor or another source that is out of the control of the establishments. We do not consider the receipt of PDI to be an error that must be reported to FDA on an annual basis as described in the guidance. However, the blood establishment's measurement of a donor's blood pressure, pulse or red blood cell loss are in the control of the establishment, and errors in such measurement would not be identified through PDI.

We have considered the comment and have determined that the comment does not present information that would warrant changes to the guidance document at this time.

(Comment 2) Another comment requested that the annual report not include corrective actions taken for each error because this would represent duplication of information already available to FDA via its inspection compliance program. The comment noted that each establishment has a defined deviation management and corrective action program and each error related to donor eligibility determination is investigated. The comment further noted that FDA should not request this report because the information can be reviewed during FDA's inspection compliance program.

(Response 2) We disagree that including a summary of corrective actions on the annual report would represent duplication of information. Establishments may submit the information already developed as part of their deviation management and corrective action program. A new investigation does not need to be completed and new documentation does not need to be created. Receiving annual information about the corrective actions taken will allow us to better assess the robustness of the establishment's GMP system in a timely manner. We also note that blood establishments may elect not to use the enforcement discretion provided in the guidance to release certain unsuitable blood components, and therefore, would not submit a report to FDA.

Comments are being considered as the guidance is being finalized. We are clarifying in the final guidance that the annual report about the corrective actions taken may be submitted in summary format. This change in wording did not affect our estimate of the burden.

*Description of Respondents:* Respondents to the collection of information are licensed and registered-only establishments that collect blood and blood components intended for transfusion or further manufacturing use.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity/draft guidance section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Annual report of released unsuitable units—Licensed blood collection establishments/section III.A | 50 | 1 | 50 | 4 | 200 |
| Annual report of released unsuitable units—Registered-only blood establishments/section III.A | 50 | 1 | 50 | 4 | 200 |
| Total | | | | | 400 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the proposed reporting on our experience with similar information collections and a review of similar reporting data.

Dated: August 21, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–18245 Filed 8–23–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–N–3499]**

### Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Alternative Form of Hearing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of alternative form of hearing.

**SUMMARY:** The Food and Drug Administration (FDA) announces an alternative form of hearing regarding the Center for Drug Evaluation and Research's (CDER's) proposal to refuse to approve ITCA 650 (exenatide in DUROS device), a drug-device combination product that is the subject of a new drug application (NDA) submitted by Intarcia Therapeutics, Inc. (Intarcia). CDER is holding a public hearing before an advisory committee under FDA regulations as an alternative form of hearing.

**DATES:** The meeting will be held virtually on September 21, 2023, from 9 a.m. to 5:30 p.m. Eastern Time.

**ADDRESSES:** All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform. Answers to commonly asked questions including information regarding special accommodations due to a disability may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

**FOR FURTHER INFORMATION CONTACT:** LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2855, email: *EMDAC@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area).

**SUPPLEMENTARY INFORMATION:**

*Background:* This advisory committee meeting is being held pursuant to a March 24, 2023, letter from the Chief Scientist of FDA, Dr. Namandjé N. Bumpus, wherein she granted Intarcia's request under § 12.32(b)(3)(ii) (21 CFR 12.32(b)(3)(ii)) for a public hearing before an advisory committee in lieu of a formal evidentiary public hearing under part 12 (21 CFR part 12).

Intarcia submitted NDA 209053 for ITCA 650 (exenatide in DUROS device), a novel drug-device combination product on November 21, 2016, under section 505(b)(1) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(b)(1)). On September 21, 2017, CDER issued a complete response (CR) letter to Intarcia under § 314.110(a) (21 CFR 314.110(a)) stating that NDA 209053 could not be approved in its present form, describing the specific deficiencies and, where possible, recommending ways that Intarcia might remedy these deficiencies. On September 9, 2019, Intarcia resubmitted the NDA under section 505(b)(1) of the FD&C Act. On March 9, 2020, CDER issued a second CR letter stating that NDA 209053 could not be approved in its present form, describing the specific deficiencies and, where possible, recommending ways that Intarcia might remedy these deficiencies. The CR letters stated that Intarcia is required either to resubmit the application, fully addressing all deficiencies listed in the letter, or take other actions available under § 314.110 (*i.e.,* resubmit the application, withdraw the application, or request an opportunity for a hearing). Applicable regulations, including 21 CFR 10.75, also provide a mechanism for applicants to obtain formal review of one or more decisions reflected in a CR letter.

On March 16, 2021, Intarcia submitted a request under § 314.110(b)(3) for an opportunity for a hearing on whether there are grounds under section 505(d) of the FD&C Act for denying approval of NDA 209053. In the **Federal Register** of September 2, 2021, FDA published a notice of opportunity for a hearing (NOOH) regarding CDER's proposal to refuse to approve NDA 209053 submitted by Intarcia for ITCA 650 (86 FR 49334). The NOOH gave Intarcia an opportunity to request a hearing before the Commissioner of Food and Drugs on CDER's proposal to refuse to approve NDA 209053. On September 13, 2021, Intarcia submitted a notice of participation and request for a hearing. Intarcia submitted data, information, and analyses in support of its hearing request on November 1, 2021, and February 15, 2022.

On July 29, 2022, CDER issued, via email to Intarcia, a proposed order proposing to refuse to approve NDA 209053 in its present form (see Docket No. FDA–2021–N–0874). Intarcia responded to CDER's proposed order on October 10, 2022.

On February 7, 2023, the Chief Scientist of FDA issued a letter to Intarcia and CDER that stated, in part: ''Under 21 CFR 12.32(a), a person seeking a hearing under 21 CFR part 12 may request an alternative form of hearing, such as a hearing before a public advisory committee under 21 CFR part 14.'' Dr. Bumpus stated that she would grant a request from Intarcia for an alternative form of hearing under part 14 (21 CFR part 14) in lieu of a formal evidentiary hearing under part 12. On February 20, 2023, Intarcia submitted a request in the form of a citizen petition under 21 CFR 10.30, requesting a public hearing before an advisory committee under part 14 in lieu of Intarcia's pending request for a formal evidentiary hearing under part 12. On March 24, 2023, Dr. Bumpus issued a letter granting Intarcia's request for an alternative form of hearing.

Accordingly, CDER is holding this meeting pursuant to the March 24, 2023, letter from Dr. Bumpus, wherein she granted Intarcia's request under § 12.32(b)(3)(ii) for a public hearing before an advisory committee in lieu of a formal evidentiary hearing. This document serves as the notice of an alternative form of hearing as required under § 12.32(e).

*Subject of Alternative Form of Hearing:* CDER's proposed order to refuse to approve ITCA 650 (exenatide in DUROS device) is the subject of the alternative form of hearing before the Endocrinologic and Metabolic Drugs Advisory Committee (see Docket No. FDA–2021–N–0874).

*Parties to the Alternative Form of Hearing:* Intarcia Therapeutics, Inc. and the Center for Drug Evaluation and Research are the parties to the alternative form of hearing before the Endocrinologic and Metabolic Drugs Advisory Committee.

*Issues To Be Discussed:* The issues presented at the hearing will be those related to the safety and efficacy of ITCA 650, a drug-device combination product that is the subject of an NDA submitted by Intarcia (NDA 209053), for the proposed indication, as an adjunct to diet and exercise, to improve glycemic control in adults with type 2 diabetes mellitus.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. No participant will be prejudiced by

this waiver, and that the ends of justice will be served by allowing for this modification to FDA's advisory committee meeting procedures.

Dated: August 21, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–18241 Filed 8–23–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–D–2436]**

### Manufacturing Changes and Comparability for Human Cellular and Gene Therapy Products; Draft Guidance for Industry; Extension of the Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA or we) is extending the comment period for the notice announcing the availability of a draft guidance entitled ''Manufacturing Changes and Comparability for Human Cellular and Gene Therapy Products; Draft Guidance for Industry,'' that appeared in the **Federal Register** of July 14, 2023. We are taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

**DATES:** FDA is extending the comment period on the draft guidance published July 14, 2023 (88 FR 45222). Submit either electronic or written comments on the draft guidance by November 13, 2023, to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2023–D–2436 for ''Manufacturing Changes and Comparability for Human Cellular and Gene Therapy Products; Draft Guidance for Industry.'' 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.'' We will review this copy, including the claimed confidential information, in our 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.

**FOR FURTHER INFORMATION CONTACT:** Karen Fikes, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 14, 2023 (88 FR 45222), we published a notice of availability for a draft guidance entitled ''Manufacturing Changes and Comparability for Human Cellular and Gene Therapy Products; Draft Guidance for Industry.'' This action opened a docket with a 60-day comment period.

We have received requests for a 30-day extension of the comment period for the draft guidance. We have considered the requests and are extending the comment period for the draft guidance for 60 days, until November 13, 2023. (A 60-day extension would fall on November 11, 2023, which is a Saturday, so we have extended the comment period until the next business day, which is November 13, 2023.) We believe that a 60-day extension allows adequate time for interested persons to submit comments.

Dated: August 21, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–18235 Filed 8–23–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–N–3300]**

### Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. This meeting will be held to discuss the Strain Selection for the Influenza Virus Vaccines for the 2024 Southern Hemisphere Influenza Season. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held virtually on October 5, 2023, from 8:30 a.m. to 1:30 p.m. Eastern Time.

**ADDRESSES:** All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform. The online web conference meeting will be available at the following link on the day of the meeting: *https://youtube.com/live/3MRqhXOB3lQ.*

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–3300. The docket will close on October 4, 2023. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 4, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before September 27, 2023, will be provided to the Committee. Comments received on or after September 28, 2023, and by October 4, 2023, will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2023–N–3300 for ''Vaccines and Related Biological Products Advisory Committee (VRBPAC); Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m. Eastern Time, 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.'' FDA 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 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 the 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.

**FOR FURTHER INFORMATION CONTACT:** Sussan Paydar or Valerie Vashio, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 202–657–8533, *CBERVRBPAC@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/*

*AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. On October 5, 2023, the Committee will meet in open session to discuss the Strain Selection for the Influenza Virus Vaccines for the 2024 Southern Hemisphere Influenza Season.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before September 27, 2023, will be provided to the Committee. Comments received on or after September 28, 2023, and by October 4, 2023, will be taken into consideration by FDA. Oral presentations from the public will be scheduled between approximately 11:20 a.m. and 12:20 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, along with their names, email addresses, and direct contact phone numbers of proposed participants, on or before 12 p.m. Eastern Time on September 20, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by 6 p.m. Eastern Time, September 22, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Sussan Paydar or Valerie Vashio (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. No participant will be prejudiced by this waiver, and that the ends of justice will be served by allowing for this modification to FDA's advisory committee meeting procedures.

Dated: August 21, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–18243 Filed 8–23–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–N–3498]**

### Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Endocrinologic and Metabolic Drugs Advisory Committee (the Committee). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held virtually on September 21, 2023, from 9 a.m. to 5:30 p.m. Eastern Time.

**ADDRESSES:** All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform. Answers to commonly asked questions about FDA advisory committee meetings including information regarding special accommodations due to a disability may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–3498. Please note that late, untimely filed comments will not be considered. The docket will close on September 20, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 20, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before September 15, 2023, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2023–N–3498 for ''Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA 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 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 the 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.

**FOR FURTHER INFORMATION CONTACT:** LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2855, email: *EMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. The Committee will discuss the safety and efficacy of ITCA 650 (exenatide in DUROS device), a drug-device combination product that is the subject of a new drug application (NDA) submitted by Intarcia Therapeutics, Inc. (Intarcia) (NDA 209053), for the proposed indication, as an adjunct to diet and exercise, to improve glycemic control in adults with type 2 diabetes mellitus. CDER is holding this meeting pursuant to a March 24, 2023, letter from the Chief Scientist of FDA, Dr. Namandjé N. Bumpus, wherein she granted Intarcia's request under 21 CFR 12.32(b)(3)(ii) for a public hearing before an advisory committee in lieu of a formal evidentiary hearing. Intarcia requested a public hearing before an advisory committee on CDER's proposal to refuse approval of Intarcia's NDA for ITCA 650 (see Docket No. FDA–2021–N–0874).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before September 15, 2023, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 13, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 14, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee

meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact LaToya Bonner (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. No participant will be prejudiced by this waiver and that the ends of justice will be served by allowing for this modification to FDA's advisory committee meeting procedures.

Dated: August 21, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–18250 Filed 8–23–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Presidential Advisory Council on HIV/AIDS

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice of a hybrid meeting.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA or the Council) will convene the 78th full council meeting on Wednesday, September 20, 2023. The meeting will convene in Charleston, West Virginia and it will also utilize virtual technologies. The meeting will be open to the public. Due to limited space, pre-registration is encouraged for members of the public who wish to attend the meeting in-person. Please email your name to *PACHA@hhs.gov* by close of business Wednesday, September 13, 2023 to pre-reigster. There will be a public comment session during the meeting; pre-registration is required to provide public comment. To pre-register to provide public comment, please send an email to *PACHA@hhs.gov* and include your name, organization, and title by close of business Wednesday, September 13, 2023. If you decide you would like to provide public comment but do not pre-register, you may submit your written statement by emailing *PACHA@hhs.gov* by close of business September 27, 2023. The meeting agenda will be posted on the PACHA page on *HIV.gov* at *https://www.hiv.gov/federal-response/pacha/about-pacha* prior to the meeting.

**DATES:** The meeting will be held on Wednesday, September 20, 2023 from approximately 9 a.m.–6 p.m. (ET).

**ADDRESSES:** The meeting will be located at the University of Charleston, 2300 MacCorkle Ave. SE, Charleston, WV 25304. To attend the meeting virtually, please visit *www.hhs.gov/live.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Caroline Talev, MPA, Senior Management Analyst, at *PACHA@hhs.gov* or *Caroline.Talev@hhs.gov,* or please call 202–795–7697. Additional information can be obtained by accessing the Council's page on the *HIV.gov* site at *www.hiv.gov/pacha.*

**SUPPLEMENTARY INFORMATION:** PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996 and is currently operating under the authority given in Executive Order 14048, dated September 30, 2021. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective HIV diagnosis, treatment, prevention, and quality care services. The functions of the Council are solely advisory in nature.

The Council consists of not more than 35 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, population health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. PACHA selections also include persons with lived HIV experience and racial/ethnic and sexual and gender minority persons disproportionately affected by HIV. Council members are appointed by the Secretary.

Dated: August 3, 2023.

**Caroline Talev,**

*Senior Management Analyst, Office of Infectious Disease and HIV/AIDS Policy (OIDP), Alternate Federal Officer, PACHA, Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS).*

[FR Doc. 2023–18267 Filed 8–23–23; 8:45 am]

**BILLING CODE 4150–43–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Presidential Advisory Council on HIV/AIDS

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice; Solicitation of nominations for appointment to Presidential Advisory Council on HIV/AIDS (PACHA).

**SUMMARY:** The Office of the Assistant Secretary for Health (OASH) is seeking nominations for membership on the Presidential Advisory Council on HIV/AIDS (referred to as PACHA and/or the Council). The PACHA is a federal advisory committee within the U. S. Department of Health and Human Services (HHS). Management support for the activities of this Council is the responsibility of the OASH. The qualified individuals will be nominated to the Secretary of Health and Human Services for consideration for appointment as members of the PACHA. Members of the Council, including the Chair, are appointed by the Secretary. Members are invited to serve for overlapping terms of up to four-year; terms of more than two years are contingent upon the authorized continuation of the Council. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs, policies, and research to promote effective treatment, prevention and cure of HIV and AIDS, including considering common co-morbidities, as needed to promote effective HIV diagnosis, treatment, prevention, and quality care services. The functions of the Council are solely advisory in nature.

**DATES:** Nominations for membership on the PACHA must be received no later than 8:00 p.m. (ET) Friday, January 5, 2024. Packages received after this time will not be considered for the current membership cycle.

**ADDRESSES:** All nominations should be emailed in one email to *PACHA@hhs.gov* with the subject line ''PACHA Application 2024.''

**FOR FURTHER INFORMATION CONTACT:** Ms. Caroline Talev, Senior Management Analyst and Alternate Designated Federal Officer to PACHA; email *Caroline.Talev@hhs.gov* and include in the subject line ''PACHA Application 2024'' or please call 202–795–7697. Additional information about PACHA can be obtained by accessing the Council's website at About PACHA | *HIV.gov.*

**SUPPLEMENTARY INFORMATION:** PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. Under a Presidential memorandum, dated July 13, 2000 and under Executive Order 13703, dated July 30, 2015, certain authorities were given to the PACHA for the implementation of the National HIV/AIDS Strategy for the United States (Strategy or NHAS). The Council was continued by Executive Order 14048, dated September 30, 2021. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature. The Council consists of not more than 35 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, population health, faith, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. PACHA selections will also include persons with lived HIV experience and racial/ethnic and sexual and gender minority persons disproportionately affected by HIV. Council members are appointed by the Secretary. Pursuant to advance written agreement, Council members shall receive no stipend for the advisory service they render as members of PACHA. However, as authorized by law and in accordance with Federal travel regulations, PACHA members may receive per diem and reimbursement for travel expenses incurred in relation to performing duties for the Council.

This announcement is to solicit nominations of qualified candidates to fill current and upcoming vacancies on the PACHA.

**Nominations**

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of PACHA's objectives. Federal employees will not be considered for membership. The membership of the Committee will reflect diverse individuals. To ensure that the Commission membership is fairly balanced in terms of the points of view presented, consideration is also given to organizations representing the health interest of racial and ethnic minority groups. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Committee members are Special Government Employees (SGEs), requiring the filing of financial disclosure reports at the beginning and annually during their terms. Individuals who are selected for appointment will be required to provide detailed information regarding their financial interests. Note that the need for different expertise varies from year to year and a candidate who is not selected for an open position may be reconsidered for a subsequent open position. SGE nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items to be considered of appointment:

- Current curriculum vitae or resume, including complete contact information (telephone numbers, mailing address, email address).
- A biographical sketch of the nominee (200 words or fewer).
- A letter of interest or personal statement from the nominee stating how their expertise would inform the work of PACHA.
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services.

Individuals can nominate themselves for consideration of appointment to the Council. All nominations must include the required information in *one email* sent to *PACHA.hhs.gov* with the subject line, ''PACHA Application 2024.'' Incomplete nomination applications will not be processed for consideration.

The Department is legally required to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee. Appointment to the Council shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as members of the Council.

Dated: August 21, 2023.

**Caroline Talev,**

*Senior Management Analyst, Alternate Designated Federal Officer, PACHA, Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.*

[FR Doc. 2023–18261 Filed 8–23–23; 8:45 am]

**BILLING CODE 4150–43–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel; K99 Training Grant Applications.

*Date:* September 13, 2023.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ashley Fortress, Ph.D., Designated Federal Official, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr., Bethesda, MD 20817 (301) 451–2020, *ashley.fortress@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 18, 2023.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–18184 Filed 8–23–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should register at: *https://public.csr.nih.gov/AboutCSR/Organization/CSRAdvisoryCouncil/Registration.*

The meeting can be viewed remotely via the NIH Videocasting website: *https://videocast.nih.gov/watch=52210.*

*Name of Committee:* Center for Scientific Review Advisory Council.

*Date:* September 18, 2023.

*Time:* 9:00 a.m. to 3:30 p.m.

*Agenda:* Provide advice to the Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Conference room 270 A&B, Bethesda, MD 20892 (Hybrid Meeting).

*Contact Person:* Bruce Reed, Ph.D., Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–9159, *reedbr@mail.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 stringent procedures for entrance into NIH federal property. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://public.csr.nih.gov/AboutCSR/Organization/CSRAdvisoryCouncil,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 21, 2023.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–18264 Filed 8–23–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Advisory Committee for Women's Services (ACWS); Solicitation of Nominations for Additional Non-Voting Representatives on the Maternal Mental Health Task Force

**AGENCY:** Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA) within the Department of Health and Human Services (HHS), is soliciting applications from qualified individuals or organizations to be considered for non-voting representative positions on the Maternal Mental Health Task Force subcommittee of the Advisory Committee for Women's Services (ACWS) (ACWS Subcommittee), as authorized in the Consolidated Appropriations Act. This notice solicits additional representatives.

**DATES:** Nomination period is open until September 22, 2023.

**ADDRESSES:** All nominations should be sent to Valerie Kolick, Designated Federal Officer (DFO), Advisory Committee on Women's Services, SAMHSA, 18th Floor, 5600 Fishers Ln., Rockville, MD 20857. Nomination materials, including attachments, may be submitted electronically to *valerie.kolick@samhsa.hhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Valerie Kolick, Designated Federal Officer, Advisory Committee on Women's Services, SAMHSA, 5600 Fishers Ln., Rockville, MD 20857. Telephone number (240) 276–1738. Inquiries can be sent to *valerie.kolick@samhsa.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** As previously announced in 88 FR 24622 (Apr. 21, 2023), the ACWS Subcommittee will consist of non-voting representatives selected by the ACWS DFO. We are issuing this current notice to solicit additional representatives to the ACWS Subcommittee. The ACWS's role is to advise the Associate Administrator for Women's Services (AAWS) on appropriate activities to be undertaken by the agencies of the Administration with respect to women's substance use and mental health services, including services which require a multidisciplinary approach. These may include discussion on the development of policies and programs regarding women's issues; plans to standardize and enhance the collection of data on women's health, and other emerging issues concerning women's substance use and mental health services.

Management and support services for Committee activities are provided by staff from the HHS SAMHSA. The ACWS charter is available at *https://www.samhsa.gov/about-us/advisory-councils/acws/committee-charter.* The ACWS meetings are held not less than two times per fiscal year.

Subcommittees of the ACWS may be established with the approval of the Assistant Secretary or the AAWS. The advice/recommendations of a subcommittee must be deliberated by the parent committee. A subcommittee may not provide advice or work products directly to the agency. The Department Committee Management Officer will be notified upon the establishment of each subcommittee and will be provided information on its name, membership, function, and estimated frequency of meetings.

In particular, this subcommittee will focus on maternal mental health and substance use including prevention, screening, diagnosis, treatment, equity and community-based interventions. These non-voting positions will consist of:

Federal members to include representatives of: Department of Health and Human Services, Substance Abuse Mental Health Services Administration, Assistant Secretary for Planning and Evaluation, Administration for Children and Families, Centers for Disease Control and Prevention, Centers for Medicare and Medicaid Services, Health Resources and Services Administration, Indian Health Services, and other Federal departments as necessary.

Non-Federal members to include representatives of the following with expertise in maternal, mental health, and/or substance use: professional medical societies, professional nursing societies, and/or health paraprofessional societies, nonprofit organizations,

relevant industry representatives, individuals with lived experience, and other representatives, as appropriate.

Representatives will be designated to occupy the positions for a two-year term to commence during the 2023 calendar year. The individuals chosen for representation on ACWS Subcommittee will be recommended by the DFO or designee during the 2023 calendar year and appointed by the Assistant Secretary for Mental Health and Substance Use. Details of application requirements are provided below.

**Nominations**

SAMHSA is requesting nominations of representatives to fill non-voting positions for the ACWS Subcommittee. The representatives can be individuals or organizations. The representatives will be recommended by the DFO or designee during the 2023 calendar year and approved by the Assistant Secretary.

Selection of representatives will be based on the qualifications of the individual or organization to contribute to the accomplishment of the ACWS mission, as described in the Committee charter. In selecting representatives to be considered for these positions and to ensure that representation is fairly balanced in terms of points of view, SAMHSA will give close attention to equitable geographic distribution, expertise mix, and diversity, and give priority to individuals with lived experience, and U.S.-chartered 501(c)(3) organizations that operate within the United States, and have membership with demonstrated expertise in maternal mental health, and/or substance use or related research, clinical services, or advocacy and outreach through professional organizations and/or industry on issues concerning maternal mental health and/or substance use.

Organizations that currently have non-voting liaison representatives serving on ACWS are also eligible for nomination or to nominate themselves for consideration.

The representatives will perform the associated duties without compensation and will not receive per diem or reimbursement for travel expenses. It is expected there will be at least one in-person ACWS Subcommittee meeting per year in the DC metropolitan area during the designated term of appointment. Representatives will need to pay for their own travel.

To qualify for consideration of selection to the ACWS Subcommittee, an individual or organization should submit the following items:

(1) A statement of the organization's or individual's experience and expertise in maternal mental health, substance use, and/or related research, clinical services, or advocacy and outreach through professional organizations and/or industry, as well as expert knowledge or lived experience of the broad issues and topics pertinent to maternal mental health and/or substance use. This information should demonstrate the organization's or individual's proven ability to work and communicate with the maternal mental and/or substance use patient and advocacy community, and other public/private organizations concerned with maternal mental health and/or substance use, including public health agencies at the Federal, State, and local levels.

(2) Two to four letters of recommendation that clearly state why the applicant is qualified to serve on the ACWS Subcommittee in a non-voting position. These letters should be from individuals who are not part of the organization.

(3) A statement that the individual is willing to serve as a non-voting liaison representative of the ACWS Subcommittee and will cover expenses to attend at least one ACWS meeting per year in Washington DC metropolitan area during the designated term of appointment. Submitted nominations must include these critical elements in order for the individual or organization to be considered for one of the ACWS Subcommittee positions.

Nomination materials should be typewritten, using a 12-point font and double-spaced. Nominations are being accepted on a rolling basis until the deadline.

*Electronic submissions:* Nomination materials, including attachments, may be submitted electronically to *valerie.kolick@samhsa.hhs.gov.* Telephone and facsimile submissions cannot be accepted.

HHS makes every effort to ensure that the membership of Federal advisory committees is fairly balanced in terms of points of view represented. Every effort is made to ensure that a broad representation of geographic areas, sex, ethnic and minority groups, and people with disabilities are given consideration for membership on Federal advisory committees. Selection of the representatives shall be made without discrimination on the basis of age, sex, race, ethnicity, sexual orientation, sexual identity, disability, and cultural, religious, or socioeconomic status.

*Authority:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) is required by 42 U.S.C. 290aa; section 501(f)(2)(C) of the Public Health Service Act, as amended. The ACWS is governed by the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. The Maternal Mental Health Task Force subcommittee is authorized in section 1113 of Public Law 117–328 (Consolidated Appropriations Act, 2023).

Dated: August 17, 2023.

**Carlos Castillo,**

*Committee Management Officer.*

[FR Doc. 2023–18216 Filed 8–23–23; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[BLM_NV–FRN_MO4500173497]**

### Filing of Plats of Survey; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

**DATES:** Filing is applicable at 10 a.m. on the dates indicated below.

**FOR FURTHER INFORMATION CONTACT:** Michael O. Harmening, Chief Cadastral Surveyor for Nevada, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:**

1. The Plat of Survey of the following described land was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on July 24, 2023.

The plat, in 10 sheets, representing the dependent resurvey of the Sixth Standard Parallel South, through a portion of Range 57 East, a portion of the west boundary, the north boundary, the subdivisional lines and portions of certain mineral surveys, Township 24 South, Range 57 East, Mount Diablo Meridian, Nevada, under Group No. 892, was accepted July 05, 2023. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on July 18, 2023.

The plat, in 1 sheet, representing the dependent resurvey of Mineral Survey No. 38, Township 28 North, Range 66 East, Mount Diablo Meridian, Nevada, under Group No. 998, was accepted July 18, 2023. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on July 05, 2023.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the south boundary, Township 17 South, Range 49 East, and the dependent resurvey of a portion of the subdivisional lines, the subdivision of Section 1, and metes-and-bounds surveys in Section 1, Township 18 South, Range 49 East, Mount Diablo Meridian, Nevada, under Group No. 1000, was accepted June 29, 2023. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

4. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on May 17, 2023.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the north boundary, portions of the subdivisional lines, and the subdivision of section 3, Township 20 South, Range 61 East, Mount Diablo Meridian, Nevada, under Group No. 997, was accepted May 10, 2023. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

5. The Supplemental Plat of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada, on March 30, 2023.

The supplemental plat, in 1 sheet, showing the subdivision of lot 15 of Section 2, Township 21 South, Range 62 East, Mount Diablo Meridian, Nevada, under Group No. 1003, was accepted March 29, 2023. This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The surveys and supplemental plat, listed above, are now the basic record for describing the lands for all authorized purposes. These records have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information.

Dated: August 18, 2023.

**Michael O. Harmening,**

*Chief Cadastral Surveyor for Nevada.*

[FR Doc. 2023–18227 Filed 8–23–23; 8:45 am]

**BILLING CODE 4331–21–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

**[Docket No. BOEM–2023–048]**

### Notice of Availability of a Joint Record of Decision for the Revolution Wind Farm and Revolution Wind Export Cable Project

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Army Corps of Engineers (USACE), Department of the Army (DA).

**ACTION:** Notice of Availability (NOA); record of decision (ROD).

**SUMMARY:** BOEM announces the availability of the joint ROD on the Final Environmental Impact Statement (FEIS) for the construction and operations plan (COP) submitted by Revolution Wind, LLC (Revolution Wind) for its Revolution Wind Farm and Revolution Wind Export Cable Project (Project) offshore Rhode Island. The joint ROD includes the Department of the Interior's (DOI) decision regarding the Revolution Wind COP, NMFS' decision regarding Revolution Wind's request for Incidental Take Regulations (ITR) and an associated Letter of Authorization (LOA) under the Marine Mammal Protection Act (MMPA), and the DA's decision regarding authorizations under section 10 of the Rivers and Harbors Act of 1899 (RHA) and section 404 of the Clean Water Act (CWA). NMFS has adopted the FEIS to support its decision of whether or not to promulgate ITRs and issue a LOA to Revolution Wind under the MMPA. USACE has adopted the FEIS to support its decision to issue a DA permit under section 10 of the RHA and section 404 of the CWA. The joint ROD concludes the National Environmental Policy Act (NEPA) process for each agency and is available with associated information on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/revolution-wind*.

**FOR FURTHER INFORMATION CONTACT:** For information on the Project ROD, please contact Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1730 or *jessica.stromberg@boem.gov*. For information related to NMFS' action, contact Katherine Renshaw, NOAA Office of General Counsel, Environmental Review and Coordination Section, (302) 515–0324, *katherine.renshaw@noaa.gov*. For information related to USACE's action, contact Ruth Brien, New England District Regulatory Division, (978) 318–8054 or *ruthann.a.brien@usace.army.mil*.

**SUPPLEMENTARY INFORMATION:** Revolution Wind seeks approval to construct, operate, maintain, and eventually decommission the Project: a wind energy facility on the Outer Continental Shelf (OCS) offshore Rhode Island. The Project would be developed within the range of design parameters outlined in the Revolution Wind COP, subject to applicable mitigation measures. The Project as proposed in the COP would include up to 100 wind turbine generators (WTGs), up to 2 offshore high voltage alternating current substations, inter-array cables linking the individual turbines to the offshore substations, one substation interconnector cable linking the substations to each other, offshore export cables, an onshore export cable system, one onshore substation, and connection to the existing electrical grid at The Narragansett Electric Company Davisville Substation in North Kingstown, Rhode Island. The WTGs, offshore substations, inter-array cables and substation interconnector cables would be located on the OCS approximately 15 nautical miles (18 statute miles) southeast of Point Judith, Rhode Island, within an area defined by Renewable Energy Lease OCS–A 0486 (Lease Area). The offshore export cables would be buried below the seabed in the OCS and State of Rhode Island submerged lands. The onshore export cables, substations, and grid connections would be located in North Kingstown, Rhode Island.

A notice of availability for the FEIS was published in the **Federal Register** on July 21, 2023. On August 15, 2023, BOEM published an errata on its website that included certain edits to the summary of impacts by alternative tables in the Executive Summary and Chapter 2 of the FEIS to include species-specific impact determinations for North Atlantic Right Whale at the request of NOAA. The errata also provides numbering corrections, and text and footnotes to tables note clarifications in Chapter 3, Appendix E–2, and Appendix F. None of these edits

or corrections are substantive or affect the analysis or conclusions in the FEIS. After carefully considering alternatives described and analyzed in the FEIS and comments from the public on the Draft EIS, the DOI has decided to approve the COP for Revolution Wind under the preferred Alternative G, which reduces the installation to 65 WTGs from the Project as proposed in the COP. The full text of the mitigation, monitoring, and reporting requirements, which will be included in BOEM's COP approval, are available in the ROD, which is available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/revolution-wind*.

NMFS has adopted BOEM's FEIS to support its decision of whether or not to promulgate the requested ITR and issue the associated LOA to Revolution Wind. NMFS' final decision of whether or not to promulgate the requested ITR and issue the LOA will be documented in a separate Decision Memorandum prepared in accordance with internal NMFS policy and procedures. The final ITR and a notice of issuance of the LOA, if issued, will be published in the **Federal Register**. The LOA would authorize Revolution Wind to take a small number of marine mammals incidental to Project construction and would set forth permissible methods of incidental taking; means of effecting the least practicable adverse impact on the species and its habitat; and requirements for monitoring and reporting. Pursuant to Section 7 of the Endangered Species Act, NMFS issued a final Biological Opinion to BOEM on July 21, 2023, evaluating the effects of the proposed action on ESA-listed species. The proposed action in the opinion includes the associated permits, approvals and authorizations that may be issued.

USACE has decided to adopt BOEM's FEIS and issue a permit to Revolution Wind pursuant to section 10 of the RHA and section 404 of the CWA. The DA permit will authorize Revolution Wind to discharge fill below the high tide line of waters of the United States. It will also authorize Revolution Wind to perform work and place structures below the mean high water mark of navigable waters of the United States and to affix structures to the seabed on the OCS.

*Authority:* This NOA is published in accordance with regulations (40 CFR parts 1500–1508) implementing the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq*.).

**Karen Baker,**

*Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.*

[FR Doc. 2023–18244 Filed 8–23–23; 8:45 am]

**BILLING CODE 4340–98–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–23–040]**

### Sunshine Act Meetings

*Agency Holding the Meeting:* United States International Trade Commission.

**TIME AND DATE:** August 31, 2023 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA–895 (Fourth Review)(Pure Granular Magnesium from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on September 8, 2023.
5. Outstanding action jackets: none.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.
Issued: August 22, 2023.

**Sharon Bellamy,**

*Acting Supervisory Hearings and Information Officer.*

[FR Doc. 2023–18367 Filed 8–22–23; 4:15 pm]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1105–0103]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Electronic Submission Form for Requests for Corrective Action, Whistleblower Protection for Federal Bureau of Investigation Employees

**AGENCY:** Office of Attorney Recruitment and Management (OARM), Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Office of Attorney Recruitment and Management (OARM), Justice Management Division, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on May 24, 2023, allowing a 60-day comment period.

**DATES:** Comments are encouraged and will be accepted for 30 days until September 25, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have 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: Deana Willis, Office of Attorney Recruitment and Management, 450 5th St. NW, Suite 10200, Washington, DC 20530, 202–514–8902, *Deana.Willis@usdoj.gov.*

**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 agency, 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;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—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.

Written comments and recommendations for this 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 information collection or the OMB Control Number 1105–0103. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

**Overview of This Information Collection**

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *Title of the Form/Collection:* Request for Corrective Action Form.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Individuals or households.

*Abstract:* Under 28 CFR part 27, individuals who wish to file a claim of FBI whistleblower retaliation must file a Request for Corrective Action (RCA) with OARM. The optional RCA form on OARM's public website increases transparency of the claims process, allows individuals to more easily discern the information required for OARM's review, and simplifies the process for filing an RCA.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 15.

7. *Estimated Time per Respondent:* 3 hours.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 45 hours.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: August 18, 2023.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023–18217 Filed 8–23–23; 8:45 am]

**BILLING CODE 4410–PB–P**

## DEPARTMENT OF JUSTICE

### Statement of Claim for Filing of Claims in the Guam Claims Program Pursuant to the Guam World War II Loyalty Recognition Act; Correction

**AGENCY:** Foreign Claims Settlement Commission, Department of Justice.

**ACTION:** Notice; correction.

**SUMMARY:** The Foreign Claims Settlement Commission, Department of Justice (DOJ), published a document in the **Federal Register** of August 1, 2023, concerning request for comments on the Statement of Claim for filing of Claims in the Guam Claims Program Pursuant to the Guam World War II Loyalty Recognition Act.

**DATES:** Submit comments on the Statement of Claim for filing of Claims in the Guam Claims Program Pursuant to the Guam World War II Loyalty Recognition Act before October 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** Jeremy LaFrancois, 202–616–6981.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of August 1, 2023, in FR Doc. 2023–16291, on page 50174, third column, in the **AGENCY** and **SUMMARY** captions, correct the agency name to read: Foreign Claims Settlement Commission.

Dated: August 17, 2023.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023–18219 Filed 8–23–23; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On August 18, 2023, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of New York in the lawsuit entitled *United States* v. *Mark Ford, Mark Ford Stables, Inc., Mark Ford Stage Road Property, Inc., and Ford Equine Ltd.,* Civil Action No. 19 Civ. 9600.

The United States filed this lawsuit seeking injunctive relief and civil penalties for violations of the Clean Water Act resulting from the defendants' unpermitted filling of wetlands and channelization of streams, unpermitted discharge of process wastewater and other pollutants from a Concentrated Animal Feeding Operation, and violation of the terms of a construction stormwater permit. The consent decree requires the defendant to perform injunctive relief, including the restoration of approximately eighteen acres of wetlands and the restoration of two streams, and to pay a $200,000.00 civil penalty.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Mark Ford, et al.,* D.J. Ref. No. 90–5–1–1–11797. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.75 (25 cents per page

reproduction cost) payable to the United States Treasury.

**Patricia McKenna,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2023–18198 Filed 8–23–23; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Procurement Collusion Strike Force Complaint Form; Correction

**AGENCY:** Antitrust Division, Department of Justice.

**ACTION:** Notice; correction.

**SUMMARY:** The Antitrust Division, Department of Justice (DOJ), published a document in the **Federal Register** of August 1, 2023, concerning request for comments on the Procurement Collusion Strike Force Complaint Form.

**DATES:** Submit comments on the Procurement Collusion Strike Force Complaint Form on or before October 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sarah Oldfield, 202–305–8915.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of August 1, 2023, in FR Doc. 2023–16290, on page 50177, second column, in the **AGENCY** and **SUMMARY** captions, correct the agency name to read: Antitrust Division.

Dated: August 17, 2023.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023–18218 Filed 8–23–23; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Exemption Application No. L–12016]**

### Proposed Exemption for Certain Prohibited Transaction Restrictions: United Automobile, Aerospace and Agricultural Implement Workers of America (the UAW or the Applicant) Located in Detroit, Michigan

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This proposed exemption would permit the receipt of a note by the UAW Retiree VEBA, as defined below, from the UAW, and the receipt of collateral on the note by the Retiree VEBA in connection with a court-approved settlement agreement.

**DATES:** *Comments due:* Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by October 10, 2023.

*Exemption date:* If granted, this proposed exemption will be in effect on the date that the grant notice is published in the **Federal Register**.

**ADDRESSES:** All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. L–12016 via email to *e-OED@dol.gov* or online through *http://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

*Comments*: Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption, and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

*Warning*: All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the *http://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

**Proposed Exemption**

The Department is proposing to grant an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. As described in more detail below, the UAW is required to make certain contributions to the UAW Retirees Health Care Plan (the Retiree Plan) pursuant to a court-approved settlement agreement. The Retiree Plan is funded through the UAW Retirees Health Care Trust (together with the Retiree Plan, the Retiree VEBA). The exemption would permit

the receipt of a Note by the Retiree VEBA from the UAW, and the receipt of collateral on the Note by the Retiree VEBA from the UAW. The collateralized Note is intended to help ensure that the Retiree VEBA receives all the contributions it is due from the UAW pursuant to the settlement agreement. This proposed exemption would not affect or reduce the amount or types of benefits offered under the Retiree VEBA.

**Summary of Facts and Representations** [1]

*The UAW*

1. The UAW is a labor union with approximately 669 active employees, as of November 1, 2021. As of December 31, 2022, the UAW had total assets of $1,129,835,327.

*The Union Supporting Parties*

2. The UAW represents that to control the steadily increasing financial burden of certain UAW-sponsored retiree health programs (the UAW Retiree Health Programs), the UAW engaged in discussions with the Office of Professional Employees International Union Local 494 (OPEIU Local 494), the UAW Staff Council of International Representatives (UAW Staff Council), and other unions (together, the Union Supporting Parties) before 2013. These discussions led to negotiated changes regarding future benefits for then-current employees, future retirees, and new hires. The UAW represents that these negotiated changes were inadequate to resolve the serious financial difficulties posed by the increasing cost of providing retiree health care. Therefore, in 2013, the UAW announced additional unilateral modifications to the UAW Retiree Health Programs that were implemented without agreement with current retirees or the unions that represented those retirees.

3. According to the UAW, the Union Supporting Parties ultimately objected to these unilateral modifications and subsequently entered into extensive negotiations with the UAW. The negotiations led to a June 2014 Memorandum of Understanding (the MOU) that set out detailed terms and conditions for the creation and funding of a Retiree VEBA and the payment of retiree health benefits to the participants and beneficiaries previously covered under the UAW Retiree Health Programs. The MOU was conditioned upon the negotiation and court approval of a final settlement agreement.

*Court-Approved Settlement Agreement*

4. In May 2014, the Union Supporting Parties and three individuals who were seeking to represent the UAW's retirees and current and former unrepresented employees eligible for current and future benefits from the UAW Retiree Health Programs filed a class action challenging the UAW's 2013 unilateral modifications to the UAW Retiree Health Programs.[2] Subsequent negotiations among all the parties resulted in a settlement agreement (the Settlement Agreement), which refined and amplified the basic agreements set out in the June 2014 MOU. The Court issued a final order approving the Settlement Agreement on November 6, 2015, and the UAW Retiree Health Programs were subsequently terminated on or about December 17, 2015.[3]

*Funding the Retiree VEBA*

5. Pursuant to the Settlement Agreement, the UAW committed to contributing approximately $354.5 million to the Retiree VEBA.[4] On December 17 and December 23, 2015, the UAW contributed a total of $240,730,693.06 to the Retiree VEBA. Under the terms of the Settlement Agreement, the UAW thereafter owed $134,720,000 to the Retiree VEBA.[5]

*The Note*

6. The parties to the Settlement Agreement negotiated certain protections for the participants and beneficiaries of the Retiree VEBA.[6] The protections include a note (the Note), to be issued by the UAW in favor of the Retiree VEBA if this exemption is granted. The Note will have a principal amount of $134,720,000, a 15-year term, an interest rate of 5.5% per year, and require the UAW to make sixty (60) equal quarterly installment payments to the Retiree VEBA according to the amortization schedule provided by UAW's actuary.

7. The Note must reflect all of the terms set forth in the Settlement Agreement regarding the UAW's contribution obligations, including the conditions and rights regarding ''acceleration'' and ''default.'' [7] If the UAW defaults in making any installment payment, or upon a reorganization of the UAW, or upon the sale of any real estate of the UAW or of its closed locals (or its or their building corporations), the Retiree VEBA will have the right to declare an acceleration of all, or a portion of, the UAW's unpaid contribution commitment.[8] In addition, if the UAW violates the debt limitation and/or subordination requirements of the Settlement Agreement,[9] the Retiree

[1] The Department notes that availability of this exemption, is subject to the express condition that the material facts and representations contained in application L–12016 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of such change.

[2] This case was filed on December 22, 2014, in the United States District Court for the Eastern District of Michigan (the Court). See *Office and Professional Employees International Union Local 494, et al* v. *United Automobile, Aerospace, and Agricultural Implement Workers of America,* Civil Action No. 2:14-cv-14868–DPH–EAS (E.D. Michigan).

[3] The UAW Retiree Health Programs included all UAW-sponsored programs that provided eligible retirees with post-employment medical benefits (including hospital, surgical, medical, prescription drugs, vision, dental, hearing, Medicare Part B reimbursement, and any other reimbursement or expenditure with respect to such benefits) under the terms of applicable collective bargaining agreements, benefit plans and programs, pension plan documents, letters of agreement and understandings, and documents reflecting terms of employment with the UAW.

[4] Specifically, the payment obligation of the UAW to the VEBA equals: (1) $346,000,000, adjusted to reflect the final number of participants and their coverage code and claims paid by the UAW from January 1, 2013, through the implementation date of the Settlement Agreement, plus interest on that adjusted amount, and (2) $8,500,000 to fund administrative expenses.

[5] This amount reflected the difference between the UAW's initial contribution amount and the UAW's final total contribution commitment (adjusted as set forth in footnote 4).

[6] The Applicant notes that the protections that are the subject of this exemption do not become an enforceable part of the Settlement Agreement unless the Department grants this proposed exemption.

[7] Under the terms of the Settlement Agreement, a default occurs when a failure to make payment of any installment when due under the Installment Payment Obligation, as defined below, is not cured on or within sixty (60) days after the scheduled due date.

[8] With respect to the term ''close affiliates,'' the Applicant states that Section 6(d) of the Settlement agreement provides that the acceleration provision applies upon the sale of ''any real estate formerly owned by closed UAW Locals or their building corporations'' (in addition to upon the sale of any real estate formerly owned by the UAW or its building corporation).

[9] Limitations on new debt: The UAW shall not incur new indebtedness for borrowed money (except for debt subordinated to that of the New VEBA) while the Installment Payment Obligation remains outstanding, except for: (a) short-term (12 months or less) lines of credit or similar credit facilities, in amounts consistent with past UAW practice, incurred for the purpose of strike support; (b) debt incurred in a cumulative amount not to exceed $10 million, escalated at five percent annually from the Final Effective Date; (c) debt incurred to pay minimum required contributions under Section 430 of the Internal Revenue Code, contributions required to prevent the application of limits on benefits and benefit accruals under Section 436 of the Internal Revenue Code, or contributions required to avoid the filing requirements (''4010 filings'') as specified by ERISA section 4010. The UAW shall notify the New VEBA in writing in the event that the UAW incurs any new indebtedness which exceeds the limitations described in this paragraph.

VEBA will have the right to declare the full outstanding principal amount of the UAW's contribution commitment immediately due and payable, with interest.

*The Mortgage*

8. The Note is collateralized by a mortgage lien (the Mortgage Lien), which is a first priority security interest on the Black Lake Property (including any present or future rents or securities deposited thereunder).[10] The Black Lake Property is located in Onaway, MI 49765, and consists of nine improved parcels of real property. As reported on the UAW's Form LM–2, the value of the Black Lake Property for the year 2022 was $107,015,388.

9. Under the terms of the Settlement Agreement, the UAW is responsible for paying all taxes levied or assessed with respect to the Black Lake Property through its wholly owned subsidiary, the Union Building Corporation (the UBC), and the UAW must maintain property insurance on the Black Lake Property. If the UAW, through the UBC, seeks to sell the Black Lake Property, or any portion thereof: (a) the sale must be for a purchase price not less than the appraised value established by an independent professional real estate valuation firm,[11] within 30 days of a purchase agreement for the sale of such homesite and surrounding land; and (b) the Independent Members may not release the Retiree VEBA's Mortgage Lien on the Black Lake Property unless and until the UAW makes all the commitments necessary to allow the Independent Members to conclude, consistent with their duties under ERISA section 404(a), that the sale of such property does not materially increase the risk borne by the Retiree VEBA. Such commitments may include the pre-payment of a portion of the installment payment obligation or the provision of alternative collateral.

10. The UAW must contribute 100% of the net proceeds from the sale of all or any portion of the Black Lake Property, to the Retiree VEBA (*i.e.,* the amount of proceeds from the sale of the property that exceeds the costs associated with the property).[12]

*The Royalty Security*

11. The Note is further collateralized by the Royalty Security set forth in a security agreement between the UAW and the Retiree VEBA, dated December 8, 2014 (the Security Agreement). Under the Security Agreement, the UAW must immediately assign a first priority security interest to the Retiree VEBA equal to 30% of the Royalty Security received or receivable from time to time from the UAW's member credit card program, upon an uncured default on the UAW's installment payment obligation.

As reported on the UAW's Form LM–2, the value of the credit card royalty payments for the year 2022 was $405,732.

12. The terms of the Note, Mortgage Lien, and Royalty Security may not be modified during the duration of the UAW's obligation to the Retiree VEBA.

*The Committee*

13. The Retiree VEBA is controlled by an eight-member committee (the Committee) that acts as the named fiduciary of the Retiree VEBA and has the authority to determine the retiree health benefits that are provided under the Retiree VEBA. The Committee is composed of: four Independent Members; [13] one member appointed by the UAW; and three members appointed by Unions whose eligible retirees have, or will have, health care benefits through the Retiree VEBA (the Union-Appointed Members).[14] With respect to the Committee's Union-appointed Members, two are appointed by UAW Staff Council and one is appointed by OPEIU Local 494. The Committee Chair is (i) chosen by the Committee members and required to be one of the Independent Members and (ii) given two votes (except with respect to the selection of a successor Chair).[15]

14. Of the Committee's initial four Independent Members, three were previously approved by the Court in connection with the Settlement Agreement. The Committee's Independent Members are selected and thereafter retain their position after receiving a majority of the votes cast by the other Committee members. The votes are allocated three each to the other Independent Members (including the Chair) and the UAW-appointed member and one each to the OPEIU Local 494-appointed member and the two UAW Staff Council-appointed members.[16] Therefore, the vote of the UAW-appointed member is not required for the selection of a successor Independent Member. In the event of a vacancy in an Independent Member position, the other Independent Members, the UAW-appointed member, and the other non-independent members (voting as described in Section 9.05(a) of the Trust Agreement), shall select the successor Independent Member.''

15. Each Independent Member serves a three-year term, and the terms are staggered. Because the terms are staggered, the Committee votes on at least one member position every year. Vacancies are filled by the Committee pursuant to the voting rules set forth in the Trust Agreement.

16. The Independent Members have sole and exclusive control over the Note, the Mortgage Lien, and the Royalty Security, in order to foreclose or realize on the Black Lake Property and the Royalty Security upon an uncured default on the UAW's installment obligation.

17. No one other than the Independent Members, or their delegate, may make any decisions with respect to the Collateral.

18. The Department notes that the Independent Members must exercise their duties with respect to such instruments prudently and solely in the interests of the participants and beneficiaries of the Retiree VEBA, consistent with their fiduciary duties under ERISA section 404.

[10] All persons or entities who have or may acquire an interest in the Black Lake Property must have notice of, and be bound by, the terms of the Note. No party will be entitled to any rights thereunder without the written consent of the Retiree VEBA.

[11] As noted below, the exemption requires a valuation of the Black Lake Property by a Qualified Independent Appraiser if and when the Black Lake Property is transferred to the Retiree VEBA.

[12] The Applicant represents that Cabin No. 4 at the Black Lake Property, along with an immediately adjacent parcel, were listed by Thomas Duke Realtors and sold in 2021 for $1,100,000, to a party independent of the UAW. No amount was due to the Retiree VEBA because there were no net proceeds from the sale.

[13] Section 1.07 of the UAW Retirees Health Care Trust agreement (the Trust Agreement) defines an Independent Member as ''[a]n individual person who serves as a member of the Committee and is not an officer or employee of the UAW or the Unions and does not have any other relationship with the UAW or the Unions that would compromise his or her independence, who satisfies the requirements of Section 9.01 of the Trust Agreement, and whose experience in such fields, without limitation, as health care, employee benefits, asset management, human resources, labor relations, economics, law, accounting or actuarial science indicates a capacity to fulfill the powers and duties of Article IX in the manner described in Section 10.11, and wherever practicable, helps to provide a range of relevant experience to the Committee.''

[14] The Applicant states that, as of July 21, 2023, the current Independent Members of the Committee are Gary Petroni, Gary Mann, Jessica Gubing, and Francine Parker, (Committee Chair), and the non-Independent Members are James King (appointed by Staff Council), Scott Andrews (appointed by Staff Council), Janice Caruso (appointed by OPEIU), and Renee Turner Baily (appointed by UAW).

[15] The initial Chair of the Committee was selected by the UAW and the Union Supporting Parties and designated in the final approval order entered by the Court. See the Settlement Agreement, Section 4(B), Doc. 19–1, Pg 20 of 82. Court Order, Doc. 38, Pg 33 of 35.

[16] Trust Agreement, Section 9.05(a).

*Exemption Request and ERISA Analysis*

19. The Applicant seeks an exemption so that the Retiree VEBA may: (1) acquire and hold the Note, Mortgage Lien, and Royalty Security; and (2) as needed, exercise its rights granted under the Note, Mortgage Lien, and Royalty Security. An exemption is necessary because these proposed transactions would violate various provisions of ERISA. Specifically, ERISA section 406(a)(1)(A) prohibits a plan fiduciary from engaging in any sale or exchange of property between the plan and a ''party in interest.'' ERISA section 3(14)(D) defines the term ''party in interest'' to include an employee organization any of whose members are covered by such plan. Thus, the UAW is a party in interest with respect to the Retiree VEBA, because it is an employee organization whose members are covered by the Retiree VEBA.

20. The acquisition of the Note by the Retirement VEBA from the UAW would constitute an exchange between the Retiree VEBA and a party in interest that would violate ERISA section 406(a)(1)(A).

21. ERISA section 406(a)(1)(B) prohibits loans or extensions of credit between a plan and a party in interest. A Note issued by the UAW and held by the Retiree VEBA would represent an extension of credit that violates ERISA section 406(a)(1)(B).

22. ERISA sections 406(a)(1)(E) and 407(a) prohibit a fiduciary from acquiring or holding on behalf of a plan an employer security or any employer real property that is not a ''qualifying employer security'' or ''qualifying employer real property,'' as defined by ERISA section 407(d)(5). The Note and Royalty Security may be characterized as a ''security'' issued by the UAW that is not stock, a marketable obligation, or an interest in a publicly traded partnership, and the Mortgage Lien might be characterized as an interest in ''employer real property'' that does not satisfy the requirements of ERISA section 407(d)(4) (geographic dispersion, suitable for more than one use, etc.). Therefore, the acquisition of the Note and the Royalty Security by the Retiree VEBA from the UAW may violate ERISA sections 406(a)(1)(E) and 407(a).

*Conditions of the Proposed Exemption*

23. The requirements of this proposed exemption include all of the material terms of the Note and the Collateral, as embedded in the Settlement Agreement, which were approved by the Court. The Independent Members must represent the Retiree VEBA for all purposes with respect to the Covered Transactions and ensure that each exemption condition is met, consistent with their fiduciary duties under ERISA section 404.

24. The Retiree VEBA must develop written policies and procedures designed to ensure that the Independent Members prudently monitor the UAW's payment obligation to the Retiree VEBA and the UAW's marketing and/or sale of all or a portion of the Black Lake Property. In addition, as soon as reasonably possible following any date the UAW defaults on its payment obligation (and also fails to correct such default), and as needed or as required thereafter, the Independent Members must engage a Qualified Independent Appraiser to value the Note, Mortgage Lien, and/or the Royalty Security, consistent with their fiduciary duties under ERISA section 404. The Independent Members must also ensure that the Retiree VEBA receives all that it is due under the terms of the Settlement Agreement from the sale of any of the Collateral, in a timely fashion, in order to offset the outstanding principal balance due under the Note.

25. On an annual basis, beginning on the date this exemption is granted, the Committee Chairperson must provide the Department with a written certification that the Chairperson monitored the Note, the Collateral, the Security Agreement, and the terms of this exemption, consistent with their fiduciary duties under ERISA section 404. The certification must be provided within 30 days of the end of the period to which it relates.

26. In the event the UAW defaults on the Installment Payment Obligation, the Committee Chairperson must submit a written report to the Department providing: (1) a certification that each condition of the exemption has been met; (2) a complete description of any foreclosure and liquidation transactions; (3) all documentation necessary to demonstrate that all relevant conditions applicable to the transaction(s) have been met; and (4) if the Retiree VEBA does not foreclose on the Collateral, a complete explanation of the Independent Members' rationale for not taking such action. The report must be submitted to the Department no later than 90 days following a default on the Installment Payment Obligation.

*Statutory Findings*

27. The Proposed Exemption is ''*Administratively Feasible.*''

The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, the exemption stems from, and is consistent with, a Settlement Agreement that was approved by the Court as being appropriate and fair. The exemption also requires oversight and monitoring by the Committee Chairperson, who is independent of the UAW, and a detailed report to the Department if the Retiree VEBA forecloses on the Collateral.

28. The Proposed Exemption is ''*In the Interest of the Retiree VEBA.*''

After reviewing the exemption application, as required by ERISA section 408(a), the Department has tentatively determined that the proposed exemption is in the interest of the Retiree VEBA because, among other things, the Covered Transactions would provide the Retiree VEBA with additional authority to enforce the UAW's contribution promises, increasing the likelihood that the Retiree VEBA's funding will be sufficient to achieve its intended purpose of providing lifetime retiree health benefits to its participants and beneficiaries. It is the Department's understanding that, if this exemption is not granted the sole consequence to the Retiree VEBA is that the Retiree VEBA will lose the security of the Note and the Collateral, and the Settlement Agreement would not otherwise be affected.

29. The Proposed Exemption is ''*Protective of the Retiree VEBA.*'' The Department has tentatively determined that the proposed exemption is protective of the rights of the Retiree VEBA's participants and beneficiaries because, among other things, the Covered Transactions are limited in scope and tailored for the exclusive purposes of providing the Independent Members with direct legal rights to enforce the UAW's contribution promises under the Note, Mortgage Lien, and Royalty Security.

**Notice to Interested Persons**

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed five-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the date of

publication of this proposed five-year exemption in the **Federal Register**. All comments will be made available to the public.

*Warning:* If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The proposed exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

**Proposed Exemption**

Based on the facts and representations set forth in the application, the Department is proposing to grant an exemption under the authority of ERISA section 408(a) and in accordance with its exemption procedure regulation [17] as follows:

*Section I. Definitions*

(a) The term ''Black Lake Property'' means a parcel of real property owned by the UAW situated in the Township of Waverly, County of Cheboygan, State of Michigan, as described in detail in Exhibit A to the Mortgage Lien.

(b) The term ''Committee'' means the eight-member committee that controls and acts as the named fiduciary of the Retiree VEBA. One Committee member is appointed by the UAW. The remaining Committee members are four Independent Members, and three members who are appointed by the Unions whose eligible retirees have, or will have, health care benefits through the Retiree VEBA (the Union-appointed Members). The Committee Chair: is chosen by the members of the Committee; is required to be one of the Independent Members; and is given two votes (except with respect to the selection of a successor Chair).

(c) The term ''Court'' means the United States District Court for the Eastern District of Michigan.

(d) The term ''Final Effective Date'' means the date on which any appeals from, or other challenges to (i) an order obtained from the Court approving and incorporating the Settlement Agreement in all respects on a class-wide basis as set forth in Section 15(b) of the Settlement Agreement and (ii) a final order entered by the Court certifying the Litigation as a non-opt out class action, with the class defined in Section 1 of the Settlement Agreement.

(e) The term ''Independent Members'' means four individuals on the Committee designated as independent members. An Independent Member may not be an officer or employee of the UAW or the other Unions or have any other relationship with the UAW or the other Unions that would compromise his or her independence.

(f) The term ''Implementation Date'' means the date that is ten days after the Final Effective Date.

(g) The term ''Installment Payment Obligation'' means the payment of an amount, as described in Section 6(C)(iii) of the Settlement Agreement, to the Retiree VEBA in equal installment payments over a term of fifteen (15) years, at an interest rate of 5.5% per annum beginning on the Implementation Date, compounded quarterly, reduced by 2 basis points for each $1 million in accelerated payments made by the UAW.

(h) The term ''Litigation'' means *Office and Professional Employees International Union Local 494, et al* v. *United Automobile, Aerospace, and Agricultural Implement Workers of America,* Civil Action No. 2:14–cv–14868–DPH–EAS (E.D. Michigan).

(i) The term ''Mortgage Lien'' means a first mortgage lien granted by the UAW on the Black Lake Property to secure payment of the Note.

(j) The term ''Note'' means a note issued by the UAW consistent with the terms of the Settlement Agreement.

(k) The term ''Qualified Independent Appraiser'' means any individual or entity with appropriate training, experience, and facilities to provide a qualified appraisal report on behalf of the Retiree VEBA regarding the particular asset or property appraised in the report, that is independent of and unrelated to any party in interest engaging in the exemption transaction and its affiliates.[18]

(l) The term ''Retiree Plan'' means UAW Retirees Health Care Plan.

(m) The term ''Retiree VEBA'' means the UAW Retirees Health Care Trust together with the Retiree Plan.

(n) The term ''Royalty Security'' means a first priority security interest in 30% of future credit card royalties and/or other fees or amounts payable to the UAW under various licensing agreements to which the UAW is a party in connection with its member credit card programs.

(o) The term ''Settlement Agreement'' means the settlement agreement that followed the Litigation.

(p) The term ''UAW'' means United Automobile, Aerospace and Agricultural Implement Workers of America.

(q) The term ''UBC'' means the Union Building Corporation, a Michigan nonprofit corporation that is wholly owned by the UAW.

(r) The term ''Unions'' means, collectively, the following unions: the

[17] 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

[18] The Qualified Independent Appraiser must meet the requirements described at 29 CFR 2570.31(i) at 76 FR 66645 (October 27, 2011). Specialized statements from the Qualified Independent Appraiser must meet the requirements of 29 CFR 2570.34(c) at 76 FR 66647 (October 27, 2011).

UAW; Staff Council of International Representatives; Office and Professional Employees International Union, Local Union 494; International Union, Security, Police and Fire Professionals of America Amalgamated Local 119; Staff Lawyers Union; and the Newspaper Guild/Communications Workers of America Local 34022.

*Section II. Covered Transactions*

If the proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(E), and 407(a) shall not apply effective as of the date a final exemption is published in the **Federal Register**, to:

(a) The acquisition by the Retiree VEBA of: (1) the Note; (2) the Mortgage Lien; and (3) the Royalty Security to secure payment of the Note;

(b) the holding by the Retiree VEBA of the Note, Mortgage Lien, and Royalty Security; and

(c) the exercise by the Retiree VEBA of the rights granted under the Note, Mortgage Lien, and Royalty Security.

*Section III. Conditions*

(a) The terms of the Note, the Mortgage Lien and the Royalty Security are consistent with the terms of the Settlement Agreement that was approved by the United States District Court for the Eastern District of Michigan on November 6, 2015, after the Court found the Settlement Agreement to be appropriate and fair to the Retiree VEBA.

(b) The Independent Members represent the Retiree VEBA for all purposes with respect to the Covered Transactions and ensure that each exemption condition is met consistent with their fiduciary duties under ERISA section 404;

(c) The Independent Members have sole and exclusive control over the Note, the Mortgage Lien, and the Royalty Security, in order to foreclose or realize on the Black Lake Property and the Royalty Security (collectively, the Collateral) upon an uncured default on the UAW's installment obligation.

(d) The UAW immediately assigns a first priority security interest to the Retiree VEBA equal to 30% of the Royalty Security received or receivable from time to time from the UAW's member credit card program, upon an uncured default on the UAW's installment payment obligation.

(e) If the UAW seeks to sell all or a portion of the Black Lake property, the Independent Members will not release the Retiree VEBA's Mortgage Lien on the Black Lake Property unless and until the UAW makes all the commitments necessary to allow the Independent Members to conclude, consistent with their duties under ERISA section 404(a), that the sale of such property does not materially increase the risk borne by the Retiree VEBA. Such commitments may include the pre-payment of a portion of the installment payment obligation or the provision of alternative collateral.

(f) Any proceeds from the sale of the Black Lake Property by the UAW, or from the Royalty Security, as required by the Settlement Agreement and Security Agreement, during the period during which the UAW owes installment payments to the Retiree VEBA (and up to the total amount of indebtedness), must be immediately paid to the Retiree VEBA to offset the outstanding principal balance due under the Note.

(g) The UAW, through the UBC, remains responsible for the payment of all taxes levied or assessed with respect to the Black Lake Property, and the UAW, through the UBC, must maintain property insurance on the Black Lake Property at all times.

(h) All persons or entities who have or may acquire an interest in the Black Lake Property must have notice of and be bound by the terms of the Note. No party will be entitled to any rights thereunder without the written consent of the Retiree VEBA.

(i) The terms of the Note, Mortgage Lien, and Royalty Security may not be modified during the duration of the UAW's obligation to the Retiree VEBA.

(j) The Retiree VEBA must prudently develop written policies and procedures designed to ensure that the Independent Members prudently monitor the UAW's payment obligation to the Retiree VEBA, as well as the UAW's marketing and/or sale of all or a portion of the Black Lake Property.

(k) The Independent Members must engage a Qualified Independent Appraiser to value the Note, Mortgage Lien, and Royalty Security as soon as reasonably possible following the date the UAW defaults on its payment obligation and fails to correct such default, and as needed or as required thereafter as determined by the Independent Members consistent with their fiduciary duties under ERISA, with the fees of such Qualified Independent Appraiser to be paid by the Retiree VEBA.

(l) Annually on the first day after the date this exemption is granted, the Committee Chairperson must provide the Department with a signed certification attesting that the Independent Members monitored the Note, the Collateral, the Security Agreement, and the terms of this exemption consistent with their fiduciary duties under ERISA section 404. The first certification must include the written policies described in condition (j). The certification must be provided within 30 days after the end of the period to which it relates.

(m) In the event the UAW defaults on the Installment Payment Obligation the Committee Chairperson must submit a written report to the Department providing: (1) a certification that each condition of the exemption has been met; (2) a complete description of any foreclosure and liquidation transactions; (3) all documentation necessary to demonstrate that all relevant conditions applicable to the transaction(s) have been met; and (4) if the Retiree VEBA does not foreclose on the Collateral, a complete explanation of the Independent Members' rationale for not taking such action. The report must be submitted no later than 90 days following the date the UAW defaults on its Installment Payment Obligation.

*Exemption date:* If granted, this proposed exemption will be in effect on the date that the grant notice is published in the **Federal Register**.

Signed at Washington, DC, this 17th day of August, 2023.

**George Christopher Cosby,**

*Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2023–18231 Filed 8–23–23; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request, Department of Labor's Restricted Use Data Access Program, New Collection

**AGENCY:** Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of

collection requirements on respondents is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about the Department of Labor's Restricted Use Data Access Program. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before October 23, 2023.

**ADDRESSES:** You may submit comments by either one of the following methods:

*Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* C.J. Krizan, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

**FOR FURTHER INFORMATION CONTACT:** C.J. Krizan by email at *ChiefEvaluationOffice@dol.gov* or by phone at (202) 693–5068.

**SUPPLEMENTARY INFORMATION:**

I. *Background:* The Chief Evaluation Office (CEO) of the U.S. Department of Labor (DOL) intends to design and implement the Restricted Use Data Access Program that will safely promote and expand restricted-use DOL data access to facilitate timely, accurate, and informative analysis, research, and program evaluation. In brief, the project involves: (1) developing a Restricted Use Data access program infrastructure, (2) supporting and the onboarding and training of DOL data users for their research, and (3) providing privacy and statistical expertise to evaluate and ensure that research products are protected against disclosure risks and are released in a timely manner.

This **Federal Register** Notice provides the opportunity to comment on proposed data collection instruments that will be used in developing the Department of Labor Restricted Use Data Access Program.

1. *Predominant Purpose Statement.* The main application document that applicants fill out for the Restricted Use Data Access Program. The document requests information about the proposed project and why the applicants need access to Department of Labor data.

2. *Supporting documents for completing the Predominant Purpose Statement.* Supporting documents for the Predominant Purpose Statement, such as examples of successful research or statistical code samples.

3. *Biographical Sketch.* A biographical sketch form and supporting materials that requests information on the qualifications of the applicant for the Restricted Use Data Access Program and not any personal information.

4. *Disclosure Review Forms.* Documentation that will be used throughout the Restricted Use Data Access Program to evaluate the disclosure risks of proposed projects and will be available to applicants to ensure transparency of the RUD application process.

II. *Desired Focus of Comments:* Currently, the Department of Labor is soliciting comments concerning the above data collection for the Department of Labor's Restricted User Data Access Program. DOL is particularly interested in comments that do the following:

- evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;
- enhance the quality, utility, and clarity of the information to be collected; 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—for example, permitting electronic submissions of responses.

III. *Current Actions:* At this time, the Department of Labor is requesting clearance for Predominant Purpose Statement, supporting documents for completing the Predominant Purpose Statement, Biographical Sketch, and Disclosure Review Forms.

*Type of Review:* New information collection request.

*OMB Control Number:* 1290–0NEW.

*Affected Public:* Individuals or Households.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

ESTIMATED ANNUAL BURDEN HOURS

| Type of instrument (form/activity) | Number of respondents | Number of responses per respondent | Total number of responses | Average burden time per response (hours) | Estimated burden hours |
|---|---|---|---|---|---|
| Predominant Purpose Statement | [1] 15 | 1 | 15 | 3 | 75 |
| Supporting documents for the Predominant Purpose Statement | [1] 15 | 1 | 15 | 2 | 30 |
| Biographical Sketch and supporting documents | [2] 15 | 5 | 75 | 1.5 | 112.5 |
| Disclosure Review Forms | [1] 15 | 1 | 15 | 2 | 30 |
| Total | 75 | ..... | 135 | ..... | 267.5 |

[1] Assumes approximately 15 Restricted Use Data Access Program applications over the calendar year.

[2] Assumes approximately 5 program participants per application for approximately 15 Restricted Use Data Access Program applications over the calendar year.

**Karen Livingston,**

*Acting Chief Evaluation Officer, U.S. Department of Labor.*

[FR Doc. 2023–18234 Filed 8–23–23; 8:45 am]

**BILLING CODE 4510–HX–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Price Index Commodities and Services Survey

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before September 25, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by consumers for a market basket of consumer goods and services. Each month, BLS data collectors called economic assistants, visit or call thousands of retail stores, service establishments, rental units, and doctors' offices, all over the United States to obtain information on the prices of the thousands of items used to track and measure price changes in the CPI. The collection of price data from retail establishments is essential for the timely and accurate calculation of the commodities and services component of the CPI. The CPI is then widely used as a measure of inflation, indicator of the effectiveness of government economic policy, deflator for other economic series, and as a means of adjusting dollar values. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 3, 2023 (88 FRN 19678).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

*Agency:* DOL–BLS.

*Title of Collection:* Consumer Price Index Commodities and Services Survey.

*OMB Control Number:* 1220–0039.

*Affected Public:* Businesses or other for-profits; Not-for-profit institutions; State, Local and Tribal Governments.

*Total Estimated Number of Respondents:* 46,305.

*Total Estimated Number of Responses:* 323,281.

*Total Estimated Annual Time Burden:* 113,840 hours.

*Total Estimated Annual Other Costs Burden:* $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

**Nicole Bouchet,**

*Acting Departmental Clearance Officer.*

[FR Doc. 2023–18232 Filed 8–23–23; 8:45 am]

**BILLING CODE 4510–24–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2023–038]**

### Freedom of Information Act (FOIA) Advisory Committee Meeting

**AGENCY:** Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

**ACTION:** Notice of Federal advisory committee meeting.

**SUMMARY:** We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

**DATES:** The meeting will be on September 7, 2023, from 10 a.m. to 1:00 p.m. EDT. You must register by 11:59 p.m. EDT September 5, 2023, to attend.

**ADDRESSES:** This meeting will be a virtual meeting. We will send access instructions for the meeting to those who register according to the instructions below.

**FOR FURTHER INFORMATION CONTACT:** Kirsten Mitchell, Designated Federal Officer for this committee, by email at *foia-advisory-committee@nara.gov,* or by telephone at 202.741.5770.

**SUPPLEMENTARY INFORMATION:**

*Agendas and meeting materials:* We will post all meeting materials, including the agenda, at *https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term.*

This meeting will be the sixth of the 2022–2024 committee term. The purpose of the meeting will be to hear about efforts at the State Department to use machine learning for document searches and reviews, and to hear reports from each of the three subcommittees: Implementation, Modernization, and Resources.

*Procedures:* This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2). If you wish to offer oral public comments during the public comments periods of the meetings, you must register in advance through Eventbrite *https://foia-advisory-committee-mtg-sept-7.eventbrite.com.* You must provide an email address so that we can provide you with information to access the meeting online. Public comments will be limited to three minutes per individual. We will also live-stream the meeting on the National Archives YouTube channel, *https://www.youtube.com/user/usnationalarchives,* and include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact

Kirsten Mitchell (contact information listed above).

**Tasha Ford,**

*Committee Management Officer.*

[FR Doc. 2023–18228 Filed 8–23–23; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Humanities

### Meeting of Humanities Panel

**AGENCY:** National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Endowment for the Humanities (NEH) will hold five meetings, by videoconference, of the Humanities Panel, a federal advisory committee, during September 2023. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

**DATES:** See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given of the following meetings:

1. Date: September 6, 2023

This video meeting will discuss applications on the topic of Civics, for the Digital Projects for the Public: Production Grants program, submitted to the Division of Public Programs.

2. Date: September 6, 2023

This video meeting will discuss applications on the topics of Text Analysis and Language, for the Digital Humanities Advancements Grants program, submitted to the Office of Digital Humanities.

3. Date: September 7, 2023

This video meeting will discuss applications on the topics of Arts and Culture, for the Digital Projects for the Public: Production Grants program, submitted to the Division of Public Programs.

4. Date: September 8, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Digital Projects for the Public: Production Grants program, submitted to the Division of Public Programs.

5. Date: September 12, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Digital Projects for the Public: Production Grants program, submitted to the Division of Public Programs. Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: August 18, 2023.

**Jessica Graves,**

*Legal Administrative Specialist, National Endowment for the Humanities.*

[FR Doc. 2023–18196 Filed 8–23–23; 8:45 am]

**BILLING CODE 7536–01–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:* Advisory Committee for Cyberinfrastructure (Fall 2023) (#25150) (Hybrid Meeting).

*Date and Time:* September 21, 2023 9:00 a.m.–4:00 p.m. (Eastern), September 22, 2023 9:00 a.m.–4:00 p.m. (Eastern).

*Place:* NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Hybrid).

The final meeting agenda and instructions to register and attend the meeting will be posted on the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp.*

Please contact Rediet Woldeselassie at *rwoldese@nsf.gov* to obtain a visitor badge. All visitors to the NSF will be required to show photo ID to obtain a badge.

*Type of Meeting:* Open.

*Contact Persons:* Walton, Amy, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–4538.

*Minutes:* May be obtained from Christine Christy, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (783) 878–0375 and will be posted within 90-days after the meeting end date to the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp.*

*Purpose of Meeting:* To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

*Agenda:* Updates on OAC wide NSF activities.

Dated: August 18, 2023.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2023–18186 Filed 8–23–23; 8:45 am]

**BILLING CODE 7555–01–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 15, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 122 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–230, CP2023–233.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18211 Filed 8–23–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 18, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 30 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–234, CP2023–237.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18209 Filed 8–23–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 15, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 27 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–231, CP2023–234.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18206 Filed 8–23–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 15, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 28 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–232, CP2023–235.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18207 Filed 8–23–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 14, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 784 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–226, CP2023–229.

**Sean C. Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18203 Filed 8–23–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 14, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 783 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–225, CP2023–228.

**Sean C. Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18202 Filed 8–23–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 16, 2023, it filed with the Postal Regulatory

Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 29 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–233, CP2023–236.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18208 Filed 8–23–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 14, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 26 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–229, CP2023–232.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18205 Filed 8–23–23; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Board of Governors; Sunshine Act Meetings

**TIME AND DATE:** August 29, 2023, at 12:00 p.m.

**PLACE:** Washington, DC

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

**Tuesday, August 29, 2023, at 12:00 p.m.**

1. Financial Matters.
2. Administrative Items.

*General Counsel Certification:* The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

**CONTACT PERSON FOR MORE INFORMATION:** Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

**Michael J. Elston,**

*Secretary.*

[FR Doc. 2023–18118 Filed 8–22–23; 4:15 pm]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 14, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 25 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–227, CP2023–230.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18204 Filed 8–23–23; 8:45 am]

**BILLING CODE P**

## POSTAL SERVICE

### Product Change—First-Class Package Service & Parcel Select Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* August 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 14, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service & Parcel Select Service Contract 7 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–228, CP2023–231.

**Sean C. Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2023–18210 Filed 8–23–23; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98168; File No. SR–NYSEARCA–2023–55]**

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.44–E

August 18, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 8, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.44–E relating to the Retail Liquidity Program. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Arca Rule 7.44–E currently sets forth the Exchange's Retail Liquidity Program (the ''Program''), which is intended to attract retail order flow to the Exchange and allow such order flow to receive potential price improvement.[3] Currently, Rule 7.44–E provides for a class of market participant called Retail Liquidity Providers (''RLPs'') who, along with non-RLP ETP Holders, are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a Retail Price Improvement Order (''RPI Order'').[4] When there is an RPI Order in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, that such interest exists.[5] Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI Orders and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order's instructions.[6] The segmentation in the Program is intended to allow retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers.

The Exchange has determined to discontinue the Program, as its affiliated exchange NYSE National, Inc. (''NYSE National'') is proposing to implement a similarly structured Retail Liquidity Program.[7] Accordingly, the Exchange proposes to delete the text of Rule 7.44–E and designate the rule as Reserved. The Exchange notes that its affiliate New York Stock Exchange LLC (''NYSE'') also currently offers a similarly structured Retail Liquidity Program,[8] and both the NYSE Retail Liquidity Program and the proposed NYSE National Retail Liquidity Program would be available to RMOs that currently participate in the Program. The Exchange further notes that several other equities exchanges currently offer retail price improvement programs as well.[9]

Subject to the effectiveness of this proposed rule change, the Exchange will implement this change in the third quarter of 2023 and announce the implementation date by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5),[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed designation of Rule 7.44–E as Reserved in conjunction with the decommissioning of the Program would remove impediments to and perfect the mechanism of a free and open market and a national market system by deleting rule text that would no longer have application, thereby promoting clarity, transparency, and consistency in the Exchange's rulebook. In addition, the proposed change would ensure that the Exchange's rules accurately reflect the functionality offered by the Exchange.

The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and would not be inconsistent with the public interest or the protection of investors because the proposed change to designate Rule 7.44–E as Reserved would alleviate any potential confusion among market participants regarding the availability of the Program. The Exchange also believes that investors would not be harmed by the proposed change, as a similarly structured Retail Liquidity Program is offered on its affiliated exchange NYSE and is proposed to be offered on its affiliate NYSE National; in addition, several other equities exchanges also currently offer price improvement programs for retail order flow.[12] The Exchange further notes that it is not under any requirement to offer the Program and that participation in the Program is voluntary.

*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. As noted above, multiple equities exchanges currently offer retail price improvement programs, and investors can readily choose to direct retail order flow to any of the other available programs (including the NYSE Retail Liquidity Program or the proposed NYSE National Retail Liquidity Program, both of which are structured similarly to the Program). Accordingly, the Exchange does not believe that the discontinuation of the Program would harm competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the

[3] The Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. *See* Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR–NYSEArca–2019–63).

[4] *See* Rules 7.44–E(a)(1) (defining an RLP) and 7.44–E(a)(4) (defining RPI Order).

[5] *See* Rule 7.44–E(j).

[6] *See* Rule 7.44–E(a)(2) (defining RMO); Rules 7.44–E(a)(3) and 7.44–E(k) (describing Retail Orders).

[7] *See* SR–NYSENAT–2023–17. The Exchange proposes to decommission the Program in tandem with the introduction of the NYSE National Retail Liquidity Program in the third quarter of 2023, on a date to be announced via Trader Update.

[8] *See* NYSE Rule 7.44 (setting forth NYSE Retail Liquidity Program).

[9] *See, e.g.,* Cboe BYX Exchange, Inc. (''BYX'') Rule 11.24 (setting forth BYX's Retail Price Improvement Program); Nasdaq BX, Inc. (''BX'') Rule 4780 (setting forth BX's Retail Price Improvement Program); Investors Exchange LLC (''IEX'') Rule 11.232 (setting forth IEX's Retail Price Improvement Program).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* notes 8, 9 & 10, *supra.*

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As discussed above, the Exchange states that this proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and would not be inconsistent with the public interest or the protection of investors because it would remove the Program from the rulebook of Exchange and prevent potential confusion among market participants regarding the availability of the Program. The Exchange also states that retiring the Program should not harm investors because: (1) NYSE, an affiliated exchange, will continue to offer a similarly structured Retail Liquidity Program, and (2) NYSE National, an affiliated exchange, proposes to introduce a Retail Liquidity Program concurrent with this Program's discontinuance. The Exchange further states that both its offering of the Program and participation therein by ETP Holders are voluntary. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will reduce the likelihood of any potential confusion among market participants regarding the availability of the Program on the Exchange. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–55 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–55. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–55 and should be submitted on or before September 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–18189 Filed 8–23–23; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78s(b)(2)(B).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98170; File No. SR–PEARL–2023–36]**

## Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule To Modify Certain Connectivity and Port Fees

August 18, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility, to amend certain connectivity and port fees.[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings,* at MIAX Pearl's principal office,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All references to the ''Exchange'' in this filing refer to MIAX Pearl Equities. Any references to the options trading facility of MIAX PEARL, LLC will specifically be referred to as ''MIAX Pearl Options.''

and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend fees for: (1) the 1 gigabit (''Gb'') and 10Gb ultra-low latency (''ULL'') fiber connections for Equity Members [4] and non-Members; (2) the Financial Information Exchange (''FIX'') Ports,[5] and the MIAX Express Orders Interface (''MEO'') Ports.[6] The Exchange adopted connectivity and port fees in September 2020,[7] and has not changed those fees since they were adopted. Since that time, the Exchange experienced ongoing increases in expenses, particularly internal expenses.[8] As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $18,331,650 for providing 1Gb and 10Gb ULL connectivity combined and $3,951,993 for providing FIX and MEO Ports.[9]

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity and port services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 1Gb connectivity, 10Gb ULL connectivity and FIX and MEO Ports in order to recoup ongoing costs and increased expenses set forth below in the Exchange's cost analysis. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The Exchange initially filed the proposal on December 30, 2022 (SR–PEARL–2022–61) (the ''Initial Proposal'').[10] On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR–PEARL–2023–06) (the ''Second Proposal'').[11] On April 20, 2023, the Exchange withdrew the Second Proposal and replaced it with a revised proposal (SR–PEARL–2023–18) (the ''Third Proposal'').[12] On June 16, 2023, the Exchange withdrew the Third Proposal and replaced it with a revised proposal (SR–PEARL–2023–28) (the ''Fourth Proposal'').[13] On August 8, 2023, the Exchange withdrew the Fourth Proposal and replaced it with this further revised proposal (SR–PEARL–2023–36).

The Exchange previously included a cost analysis in the Initial Proposal, Second, Third, and Fourth Proposals. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (separately among MIAX Pearl Options and MIAX Pearl Equities, MIAX,[14] and MIAX Emerald,[15] together with MIAX and MIAX Pearl Options, the ''affiliated markets'') to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as to why a cost allocation in this proposal may differ from the same cost allocation in a similar proposal submitted by one of its affiliated markets. Although the baseline cost analysis used to justify the proposed fees was made in the Initial, Second, Third, and Fourth Proposals, the fees themselves have not changed since the Initial, Second, Third, or Fourth Proposals and the Exchange still proposes fees that are intended to cover the Exchange's cost of providing 1Gb and 10Gb ULL connectivity and FIX and MEO Ports.

* * * * *

Starting in 2017, following the United States Court of Appeals for the District of Columbia's *Susquehanna Decision* [16] and various other developments, the Commission began to undertake a heightened review of exchange filings, including non-transaction fee filings that was substantially and materially different from it prior review process (hereinafter referred to as the ''Revised Review Process''). In the *Susquehanna Decision,* the D.C. Circuit Court stated that the Commission could not maintain

[4] The term ''Equity Member'' means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. *See* Exchange Rule 1901.

[5] ''FIX Order Interface'' or ''FOI'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 2614. *See* the Definitions section of the Fee Schedule.

[6] Each MEO interface will have one Full Service Port (''FSP'') and one Purge Port. ''Full Service Port'' or ''FSP'' means an MEO port that supports all MEO order input message types. *See* the Definitions section of the Fee Schedule.

[7] *See* Securities Exchange Act Release No. 90651 (December 11, 2020), 85 FR 81971 (December 17, 2020) (SR–PEARL–2020–33).

[8] For example, the New York Stock Exchange, Inc.'s (''NYSE'') Secure Financial Transaction Infrastructure (''SFTI'') network, which contributes to the Exchange's connectivity cost, increased its fees by approximately 9% since 2021. Similarly, since 2021, the Exchange, and its affiliates, experienced an increase in data center costs of approximately 17% and an increase in hardware and software costs of approximately 19%. These percentages are based on the Exchange's actual 2021 and proposed 2023 budgets.

[9] For the avoidance of doubt, all references to costs in this filing, including the cost categories discussed below, refer to costs incurred by MIAX Pearl Equities only and not MIAX Pearl Options, the options trading facility.

[10] *See* Securities Exchange Act Release No. 96631 (January 10, 2023), 88 FR 2671 (January 17, 2023) (SR–PEARL–2022–61).

[11] *See* Securities Exchange Act Release No. 97077 (March 8, 2023), 88 FR 15746 (March 14, 2023) (SR–PEARL–2023–06).

[12] *See* Securities Exchange Act Release No. 97417 (May 2, 2023), 88 FR 29730 (May 8, 2023) (SR–PEARL–2023–18).

[13] The Exchange met with Commission Staff to discuss the Third Proposal during which the Commission Staff provided feedback and requested additional information, including, most recently, information about total costs related to certain third party vendors. Such vendor cost information is subject to confidentiality restrictions. The Exchange provided this information to Commission Staff under separate cover with a request for confidentiality. While the Exchange will continue to be responsive to Commission Staff's information requests, the Exchange believes that the Commission should, at this point, issue substantially more detailed guidance for exchanges to follow in the process of pursuing a cost-based approach to fee filings, and that, for the purposes of fair competition, detailed disclosures by exchanges, such as those that the Exchange is providing now, should be consistent across all exchanges, including for those that have resisted a cost-based approach to fee filings, in the interests of fair and even disclosure and fair competition. *See* Securities Exchange Act Release No. 97816 (June 28, 2023), 88 FR 42976 (July 5, 2023) (SR–PEARL–2023–28).

[14] The term ''MIAX'' means Miami International Securities Exchange, LLC. *See* Exchange Rule 100.

[15] The term ''MIAX Emerald'' means MIAX Emerald, LLC. *See* Exchange Rule 100.

[16] *See Susquehanna International Group, LLP* v. *Securities & Exchange Commission,* 866 F.3d 442 (D.C. Circuit 2017) (the ''Susquehanna Decision'').

a practice of ''unquestioning reliance'' on claims made by a self-regulatory organization (''SRO'') in the course of filing a rule or fee change with the Commission.[17] Then, on October 16, 2018, the Commission issued an opinion in *Securities Industry and Financial Markets Association* finding that exchanges failed both to establish that the challenged fees were constrained by significant competitive forces and that these fees were consistent with the Act.[18] On that same day, the Commission issued an order remanding to various exchanges and national market system (''NMS'') plans challenges to over 400 rule changes and plan amendments that were asserted in 57 applications for review (the ''Remand Order'').[19] The Remand Order directed the exchanges to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [20] The Commission denied requests by various exchanges and plan participants for reconsideration of the Remand Order.[21] However, the Commission did extend the deadlines in the Remand Order ''so that they d[id] not begin to run until the resolution of the appeal of the SIFMA Decision in the D.C. Circuit and the issuance of the court's mandate.'' [22] Both the Remand Order and the Order Denying Reconsideration were appealed to the D.C. Circuit.

While the above appeal to the D.C. Circuit was pending, on March 29, 2019, the Commission issued an order disapproving a proposed fee change by BOX Exchange LLC (''BOX'') to establish connectivity fees (the ''BOX Order''), which significantly increased the level of information needed for the Commission to believe that an exchange's filing satisfied its obligations under the Act with respect to changing a fee.[23] Despite approving hundreds of access fee filings in the years prior to the BOX Order (described further below) utilizing a ''market-based'' test, the Commission changed course and disapproved BOX's proposal to begin charging connectivity at one-fourth the rate of competing exchanges' pricing.

Also while the above appeal was pending, on May 21, 2019, the Commission Staff issued guidance ''to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act.'' [24] In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [25] The Staff Guidance also states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [26]

Following the BOX Order and Staff Guidance, on August 6, 2020, the D.C. Circuit vacated the Commission's SIFMA Decision in *NASDAQ Stock Market, LLC* v. *SEC* [27] and remanded for further proceedings consistent with its opinion.[28] That same day, the D.C. Circuit issued an order remanding the Remand Order to the Commission for reconsideration in light of *NASDAQ.* The court noted that the Remand Order required the exchanges and NMS plan participants to consider the challenges that the Commission had remanded in light of the SIFMA Decision. The D.C. Circuit concluded that because the SIFMA Decision ''has now been vacated, the basis for the [Remand Order] has evaporated.'' [29] Accordingly, on August 7, 2020, the Commission vacated the Remand Order and ordered the parties to file briefs addressing whether the holding in *NASDAQ* v. *SEC* that Exchange Act section 19(d) does not permit challenges to generally applicable fee rules requiring dismissal of the challenges the Commission previously remanded.[30] The Commission further invited ''the parties to submit briefing stating whether the challenges asserted in the applications for review . . . should be dismissed, and specifically identifying any challenge that they contend should not be dismissed pursuant to the holding of *Nasdaq* v. *SEC.*'' [31] Without resolving the above issues, on October 5, 2020, the Commission issued an order granting SIFMA and Bloomberg's request to withdraw their applications for review and dismissed the proceedings.[32]

As a result of the Commission's loss of the *NASDAQ* vs. *SEC* case noted above, the Commission never followed through with its intention to subject the over 400 fee filings to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review.'' [33] As such, all of those fees remained in place and amounted to a baseline set of fees for those exchanges that had the benefit of getting their fees in place before the Commission Staff's fee review process materially changed. The net result of this history and lack of resolution in the D.C. Circuit Court resulted in an uneven competitive landscape where the Commission subjects all new non-transaction fee filings to the new Revised Review Process, while allowing the previously challenged fee filings, mostly submitted by incumbent exchanges prior to 2019, to remain in effect and not subject to the ''record'' or ''review'' earlier intended by the Commission.

---

[17] *Id.*

[18] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84432, 2018 WL 5023228 (October 16, 2018) (the ''SIFMA Decision'').

[19] *See Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). *See* 15 U.S.C. 78k–1, 78s; *see also* Rule 608(d) of Regulation NMS, 17 CFR 242.608(d) (asserted as an alternative basis of jurisdiction in some applications).

[20] *Id.* at page 2.

[21] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 85802, 2019 WL 2022819 (May 7, 2019) (the ''Order Denying Reconsideration'').

[22] Order Denying Reconsideration, 2019 WL 2022819, at *13.

[23] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network). The Commission noted in the BOX Order that it ''historically applied a 'market-based' test in its assessment of market data fees, which [the Commission] believe[s] present similar issues as the connectivity fees proposed herein.'' *Id.* at page 16. Despite this admission, the Commission disapproved BOX's proposal to begin charging $5,000 per month for 10Gb connections (while allowing legacy exchanges to charge rates equal to 3–4 times that amount utilizing ''market-based'' fee filings from years prior).

[24] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Staff Guidance'').

[25] *Id.*

[26] *Id.*

[27] *NASDAQ Stock Mkt., LLC* v. *SEC,* No 18–1324, --- Fed. App'x ----, 2020 WL 3406123 (D.C. Cir. June 5, 2020). The court's mandate was issued on August 6, 2020.

[28] *Nasdaq* v. *SEC,* 961 F.3d 421, at 424, 431 (D.C. Cir. 2020). The court's mandate issued on August 6, 2020. The D.C. Circuit held that Exchange Act ''section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.'' *Id.* The court held that ''for a fee rule to be challengeable under section 19(d), it must, at a minimum, be targeted at specific individuals or entities.'' *Id.* Thus, the court held that ''section 19(d) is not an available means to challenge the fees at issue'' in the SIFMA Decision. *Id.*

[29] *Id.* at *2; *see also id.* (''[T]he sole purpose of the challenged remand has disappeared.'').

[30] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 89504, 2020 WL 4569089 (August 7, 2020) (the ''Order Vacating Prior Order and Requesting Additional Briefs'').

[31] *Id.*

[32] *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 90087 (October 5, 2020).

[33] *See supra* note 28, at page 2.

While the Exchange appreciates that the Staff Guidance articulates an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, the practical effect of the Revised Review Process, Staff Guidance, and the Commission's related practice of continuous suspension of new fee filings, is anti-competitive, discriminatory, and has put in place an un-level playing field, which has negatively impacted smaller, nascent, non-legacy exchanges (''non-legacy exchanges''), while favoring larger, incumbent, entrenched, legacy exchanges (''legacy exchanges'').[34] The legacy exchanges all established a significantly higher baseline for access and market data fees prior to the Revised Review Process. From 2011 until the issuance of the Staff Guidance in 2019, national securities exchanges filed, and the Commission Staff did not abrogate or suspend (allowing such fees to become effective), at least 92 filings[35] to amend exchange connectivity or port fees (or similar access fees). The support for each of those filings was a simple statement by the relevant exchange that the fees were constrained by competitive forces.[36] These fees remain in effect today.

The net result is that the non-legacy exchanges are effectively now blocked by the Commission Staff from adopting or increasing fees to amounts comparable to the legacy exchanges (which were not subject to the Revised Review Process and Staff Guidance), despite providing enhanced disclosures and rationale to support their proposed fee changes that far exceed any such support provided by legacy exchanges. Simply put, legacy exchanges were able to increase their non-transaction fees during an extended period in which the Commission applied a ''market-based'' test that only relied upon the assumed presence of significant competitive forces, while exchanges today are subject to a cost-based test requiring extensive cost and revenue disclosures, a process that is complex, inconsistently applied, and rarely results in a successful outcome, *i.e.,* non-suspension. The Revised Review Process and Staff Guidance changed decades-long Commission Staff standards for review, resulting in unfair discrimination and placing an undue burden on inter-market competition between legacy exchanges and non-legacy exchanges.

Commission Staff now require exchange filings, including from non-legacy exchanges such as the Exchange, to provide detailed cost-based analysis in place of competition-based arguments to support such changes. However, even with the added detailed cost and expense disclosures, the Commission Staff continues to either suspend such filings and institute disapproval proceedings, or put the exchanges in the unenviable position of having to repeatedly withdraw and re-file with additional detail in order to continue to charge those fees.[37] By impeding any path forward for non-legacy exchanges to establish commensurate non-transaction fees, or by failing to provide any alternative means for smaller markets to establish ''fee parity'' with legacy exchanges, the Commission is stifling competition: non-legacy exchanges are, in effect, being deprived of the revenue necessary to compete on a level playing field with legacy exchanges. This is particularly harmful, given that the costs to maintain exchange systems and operations continue to increase.

The Commission Staff's change in position impedes the ability of non-legacy exchanges to raise revenue to invest in their systems to compete with the legacy exchanges who already enjoy disproportionate non-transaction fee based revenue. For example, the Cboe Exchange, Inc. (''Cboe'') reported ''access and capacity fee'' revenue of $70,893,000 for 2020[38] and $80,383,000 for 2021.[39] Cboe C2 Exchange, Inc. (''C2'') reported ''access and capacity fee'' revenue of $19,016,000 for 2020[40] and $22,843,000 for 2021.[41] Cboe BZX Exchange, Inc. (''BZX'') reported ''access and capacity fee'' revenue of $38,387,000 for 2020[42] and $44,800,000 for 2021.[43] Cboe EDGX Exchange, Inc. (''EDGX'') reported ''access and capacity fee'' revenue of $26,126,000 for 2020[44] and $30,687,000 for 2021.[45] For 2021, the affiliated Cboe, C2, BZX, and EDGX (the four largest exchanges of the Cboe exchange group) reported $178,712,000 in ''access and capacity fees'' in 2021. NASDAQ Phlx, LLC (''NASDAQ Phlx'') reported ''Trade Management Services'' revenue of $20,817,000 for 2019.[46] The Exchange notes it is unable to compare ''access fee'' revenues with NASDAQ Phlx (or other affiliated NASDAQ exchanges) because after 2019, the ''Trade Management Services'' line item was bundled into a much larger line

[34] Commission Chair Gary Gensler recently reiterated the Commission's mandate to ensure competition in the equities markets. *See* ''Statement on Minimum Price Increments, Access Fee Caps, Round Lots, and Odd-Lots'', by Chair Gary Gensler, dated December 14, 2022 (stating ''[i]n 1975, Congress tasked the Securities and Exchange Commission with responsibility to facilitate the establishment of the national market system and enhance competition in the securities markets, including the equity markets'' (emphasis added)). In that same statement, Chair Gary Gensler cited the five objectives laid out by Congress in 11A of the Exchange Act (15 U.S.C. 78k–1), including ensuring ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets. . . .'' (emphasis added). *Id.* at note 1. *See also* Securities Acts Amendments of 1975, *available at https://www.govtrack.us/congress/bills/94/s249.*

[35] This timeframe also includes challenges to over 400 rule filings by SIFMA and Bloomberg discussed above. *Sec. Indus. & Fin. Mkts. Ass'n,* Securities Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018). Those filings were left to stand, while at the same time, blocking newer exchanges from the ability to establish competitive access and market data fees. *See The Nasdaq Stock Market, LLC* v. *SEC,* Case No. 18–1292 (D.C. Cir. June 5, 2020). The expectation at the time of the litigation was that the 400 rule flings challenged by SIFMA and Bloomberg would need to be justified under revised review standards.

[36] *See, e.g.,* Securities Exchange Act Release Nos. 74417 (March 3, 2015), 80 FR 12534 (March 9, 2015) (SR–ISE–2015–06); 83016 (April 9, 2018), 83 FR 16157 (April 13, 2018) (SR–PHLX–2018–26); 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR–NYSEMKT–2013–71); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEARCA–2016–172).

[37] For example, the options exchange affiliates of MIAX Pearl Equities, MIAX, MIAX Pearl Options, and MIAX Emerald, have filed, and subsequently withdrawn, various forms of connectivity and port fee changes at least seven (7) times since August 2021. Each of the proposals contained hundreds of cost and revenue disclosures never previously disclosed by legacy exchanges in their access and market data fee filings prior to 2019.

[38] According to Cboe's 2021 Form 1 Amendment, access and capacity fees represent fees assessed for the opportunity to trade, including fees for trading-related functionality. *See* Cboe 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[39] *See* Cboe 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001155.pdf.*

[40] *See* C2 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000469.pdf.*

[41] *See* C2 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001156.pdf.*

[42] *See* BZX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000465.pdf.*

[43] *See* BZX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001152.pdf.*

[44] *See* EDGX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000467.pdf.*

[45] *See* EDGX 2022 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22001154.pdf.*

[46] According to PHLX, ''Trade Management Services'' includes ''a wide variety of alternatives for connectivity to and accessing [the PHLX] markets for a fee. These participants are charged monthly fees for connectivity and support in accordance with [PHLX's] published fee schedules.'' *See* PHLX 2020 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2001/20012246.pdf.*

item in PHLX's Form 1, simply titled ''Market services.'' [47]

The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages. First, legacy exchanges are able to use their additional non-transaction revenue for investments in infrastructure, vast marketing and advertising on major media outlets,[48] new products and other innovations. Second, higher non-transaction fees provide the legacy exchanges with greater flexibility to lower their transaction fees (or use the revenue from the higher non-transaction fees to subsidize transaction fee rates), which are more immediately impactful in competition for order flow and market share, given the variable nature of this cost on member firms. The prohibition of a reasonable path forward denies the Exchange (and other non-legacy exchanges) this flexibility, eliminates the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share with legacy exchanges. While one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that historically applied to legacy exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

While the Commission has clearly noted that the Staff Guidance is merely guidance and ''is not a rule, regulation or statement of the . . . Commission . . . the Commission has neither approved nor disapproved its content.ensp;. .'',[49] this is not the reality experienced by exchanges such as MIAX Pearl. As such, non-legacy exchanges are forced to rely on an opaque cost-based justification standard. However, because the Staff Guidance is devoid of detail on what must be contained in cost-based justification, this standard is nearly impossible to meet despite repeated good-faith efforts by the Exchange to provide substantial amount of cost-related details. For example, MIAX Pearl Options has attempted to increase similar fees using a cost-based justification numerous times, having submitted over six filings.[50] However, despite providing 100+ page filings describing in extensive detail its costs associated with providing the services described in the filings, Commission Staff continues to suspend such filings, with the rationale that the Exchange has not provided sufficient detail of its costs and without ever being precise about what additional data points are required. The Commission Staff appears to be interpreting the reasonableness standard set forth in section 6(b)(4) of the Act [51] in a manner that is not possible to achieve. This essentially nullifies the cost-based approach for exchanges as a legitimate alternative as laid out in the Staff Guidance. By refusing to accept a reasonable cost-based argument to justify non-transaction fees (in addition to refusing to accept a competition-based argument as described above), or by failing to provide the detail required to achieve that standard, the Commission Staff is effectively preventing non-legacy exchanges from making any non-transaction fee changes, which benefits the legacy exchanges and is anticompetitive to the non-legacy exchanges. This does not meet the fairness standard under the Act and is discriminatory.

Because of the un-level playing field created by the Revised Review Process and Staff Guidance, the Exchange believes that the Commission Staff, at this point, should either (a) provide sufficient clarity on how its cost-based standard can be met, including a clear and exhaustive articulation of required data and its views on acceptable margins,[52] to the extent that this is pertinent; (b) establish a framework to provide for commensurate non-transaction based fees among competing exchanges to ensure fee parity; [53] or (c) accept that certain competition-based arguments are applicable given the linkage between non-transaction fees and transaction fees, especially where non-transaction fees among exchanges are based upon disparate standards of review, lack parity, and impede fair competition. Considering the absence of any such framework or clarity, the Exchange believes that the Commission does not have a reasonable basis to deny the Exchange this change in fees, where the proposed change would result in fees meaningfully lower than comparable fees at competing exchanges and where the associated non-transaction revenue is meaningfully lower than competing exchanges.

In light of the above, disapproval of this would not meet the fairness standard under the Act, would be discriminatory and place a substantial burden on competition. The Exchange would be uniquely disadvantaged by not being able to increase its access fees to comparable levels (or lower levels than current market rates) to those of other exchanges for connectivity. If the Commission Staff were to disapprove this proposal, that action, and not market forces, would substantially affect whether the Exchange can be successful in its competition with other exchanges. Disapproval of this filing could also be viewed as an arbitrary and capricious decision should the Commission Staff continue to ignore its past treatment of non-transaction fee filings before implementation of the Revised Review Process and Staff Guidance and refuse to allow such filings to be approved despite significantly enhanced arguments and cost disclosures.[54]

* * * * *

[47] *See* PHLX 2021 Form 1 Amendment, *available at https://www.sec.gov/Archives/edgar/vprr/2100/21000475.pdf.* The Exchanges notes that this type of Form 1 accounting appears to be designed to obfuscate the true financials of such exchanges and has the effect of perpetuating fee and revenue advantages of legacy exchanges.

[48] *See, e.g., CNBC Debuts New Set on NYSE Floor, available at https://www.cnbc.com/id/46517876.*

[49] *See supra* note 24, at note 1.

[50] *See, e.g.,* Securities Exchange Act Release Nos. 92798 (August 27, 2021), 86 FR 49360 (September 2, 2021) (SR–PEARL–2021–33); 92644 (August 11, 2021), 86 FR 46055 (August 17, 2021) (SR–PEARL–2021–36); 93162 (September 28, 2021), 86 FR 54739 (October 4, 2021) (SR–PEARL–2021–45); 93556 (November 10, 2021), 86 FR 64235 (November 17, 2021) (SR–PEARL–2021–53); 93774 (December 14, 2021), 86 FR 71952 (December 20, 2021) (SR–PEARL–2021–57); 93894 (January 4, 2022), 87 FR 1203 (January 10, 2022) (SR–PEARL–2021–58); 94258 (February 15, 2022), 87 FR 9659 (February 22, 2022) (SR–PEARL–2022–03); 94286 (February 18, 2022), 87 FR 10860 (February 25, 2022) (SR–PEARL–2022–04); 94721 (April 14, 2022), 87 FR 23573 (April 20, 2022) (SR–PEARL–2022–11); 94722 (April 14, 2022), 87 FR 23660 (April 20, 2022) (SR–PEARL–2022–12); 94888 (May 11, 2022), 87 FR 29892 (May 17, 2022) (SR–PEARL–2022–18).

[51] 15 U.S.C. 78f(b)(4).

[52] To the extent that the cost-based standard includes Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Staff should be clear as to what they determine is an appropriate profit margin.

[53] In light of the arguments above regarding disparate standards of review for historical legacy non-transaction fees and current non-transaction fees for non-legacy exchanges, a fee parity alternative would be one possible way to avoid the current unfair and discriminatory effect of the Staff Guidance and Revised Review Process. *See, e.g., CSA Staff Consultation Paper 21–401, Real-Time Market Data Fees, available at https://www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/Policies/Policy2/21401_Market_Data_Fee_CSA_Staff_Consulation_Paper.pdf.*

[54] The Exchange's costs have clearly increased and continue to increase, particularly regarding capital expenditures, as well as employee benefits provided by third parties (*e.g.,* healthcare and insurance). Yet, practically no fee change proposed by the Exchange to cover its ever-increasing costs has been acceptable to the Commission Staff since 2021. The only other fair and reasonable alternative would be to require the numerous fee filings unquestioningly approved before the Staff Guidance and Revised Review Process to ''develop a record,'' and to ''explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review,'' and to ensure a

1Gb and 10Gb ULL Connectivity Fee Change

Sections 2a) and b) of the Fee Schedule describe network connectivity fees for the 1Gb ULL and 10Gb ULL fiber connections, which are charged to both Equity Members and non-Members for connectivity to the Exchange's primary and secondary facilities. The Exchange offers its Equity Members the ability to connect to the Exchange in order to transmit orders to and receive information from the Exchange. Equity Members can also choose to connect to the Exchange indirectly through physical connectivity maintained by a third-party extranet. Extranet physical connections may provide access to one or multiple Equity Members on a single connection. The number of physical connections assigned to each User [55] as of May 31, 2023, ranges from one to thirteen, depending on the scope and scale of the Equity Member's trading activity on the Exchange as determined by the Equity Member, including the Equity Member's determination of the need for redundant connectivity. The Exchange notes that 40% of its Equity Members do not maintain a physical connection directly with the Exchange in the Primary Data Center (though many such Equity Members have connectivity through a third-party provider) and another 46% have either one or two physical ports to connect to the Exchange in the Primary Data Center. Thus, only a limited number of Equity Members, 14%, maintain three or more physical ports to connect to the Exchange in the Primary Data Center.

In order to partially cover the continuous increase in aggregate costs of providing physical connectivity to Equity Members and non-Equity Members, as described below, the Exchange proposes to amend the monthly connectivity fees as follows: (a) increase the 1Gb ULL connection from $1,000 to $2,500; and (b) increase the 10Gb ULL connection from $3,500 to $8,000.[56]

FIX and MEO Ports

Similar to other exchanges, the Exchange offers its Equity Members application sessions, also known as ports, for order entry and receipt of trade execution reports and order messages. Equity Members can also choose to connect to the Exchange indirectly through a session maintained by a third-party service bureau. Service bureau sessions may provide access to one or multiple Equity Members on a single session. The number of sessions assigned to each User as of April 18, 2023, ranges from one to more than 100, depending on the scope and scale of the Equity Member's trading activity on the Exchange (either through a direct connection or through a service bureau) as determined by the Equity Member. For example, by using multiple sessions, Equity Members can segregate order flow from different internal desks, business lines, or customers. The Exchange does not impose any minimum or maximum requirements for how many application sessions an Equity Member or service bureau can maintain, and does not propose to impose any minimum or maximum session requirements for its Equity Members or their service bureaus.

Section 2)d), Port Fees, of the Fee Schedule describes fees for access and services used by Equity Members and non-Members. The Exchange provides the following types of ports: (i) FIX Ports, which allow Equity Members to send orders and other messages using the FIX protocol; and (ii) MEO Ports, which allow Equity Members order entry capabilities to all Exchange matching engines.

The Exchange operates a primary and secondary data center as well as a disaster recovery center. Each Port provides access to all Exchange data centers for a single fee. The Exchange currently provides the first twenty-five (25) FIX and MEO Ports free of charge and absorbed all associated costs since the launch of MIAX Pearl Equities. The Exchange charges the following separate monthly fees for FIX and MEO Ports: $450 for ports 26–50, $400 for ports 51–75, $350 for ports 76–100, and $300 for ports 101 and higher. The Exchange now proposes to provide the first five (5) FIX or MEO Ports free of charge, then charge a flat rate of $450 per port for port six (6) and above.[57]

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with section 6(b) of the Act [58] in general, and furthers the objectives of section 6(b)(4) of the Act [59] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Equity Members and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposed fees further the objectives of section 6(b)(5) of the Act [60] in that they are designed to 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 and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes under the Revised Review Process and as set forth in recent Staff Guidance. Based on both the BOX Order [61] and the Staff Guidance,[62] the Exchange believes that the proposed fees are consistent with the Act because they are: (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Staff Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially

comparable review process with the Exchange's filing.

[55] The term ''User'' shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602. *See* Exchange Rule 1901.

[56] The Exchange notes that while its proposed fee of $8,000 per 10Gb ULL connection is higher than MEMX's $6,000 monthly fee for its xNet Physical Connection, MEMX does not offer any other physical connectivity, such as a 1Gb connection, for a lower fee. *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). *See* MEMX Fee Schedule, Connectivity and Application Sessions, *available at https://info.memxtrading.com/fee-schedule/* (last visited August 4, 2023).

[57] The Exchange notes that the proposed fee of $450 per port equals the amount charged by MEMX for MEMX's application sessions (order entry and drop copy ports), but MEMX does not offer any ports free of charge. *See* MEMX Fee Schedule, Connectivity and Application Sessions, *available at https://info.memxtrading.com/fee-schedule/* (last visited August 4, 2023). *See* Securities Exchange Act Release No. 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26). Unlike MEMX and other exchanges, the Exchange also continues to provide FXD Ports (*i.e.,* Drop Copy Ports) free of charge.

[58] 15 U.S.C. 78f(b).

[59] 15 U.S.C. 78f(b)(4).

[60] 15 U.S.C. 78f(b)(5).

[61] *See supra* note 23.

[62] *See supra* note 24.

important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Staff Guidance, the Commission Staff states that, ''[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces.'' [63] The Staff Guidance further states that, ''. . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act.'' [64] In the Staff Guidance, the Commission Staff further states that, ''[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, . . ., specific information, including quantitative information, should be provided to support that argument.'' [65]

The proposed fees are reasonable because they promote parity among exchange pricing for access, which promotes competition, including in the Exchanges' ability to competitively price transaction fees, invest in infrastructure, new products and other innovations, all while allowing the Exchange to begin to recover its costs to provide dedicated access via 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports. As discussed above, the Revised Review Process and Staff Guidance have created an uneven playing field between legacy and non-legacy exchanges by severely restricting non-legacy exchanges from being able to increase non-transaction related fees to provide them with additional necessary revenue to better compete with legacy exchanges, which largely set fees prior to the Revised Review Process. The much higher non-transaction fees charged by the legacy exchanges provides them with two significant competitive advantages: (i) additional non-transaction revenue that may be used to fund areas other than the non-transaction service related to the fee, such as investments in infrastructure, advertising, new products and other innovations; and (ii) greater flexibility to lower their transaction fees by using the revenue from the higher non-transaction fees to subsidize transaction fee rates. The latter is more immediately impactful in competition for order flow and market share, given the variable nature of this cost on Equity Member firms. The absence of a reasonable path forward to increase non-transaction fees to comparable (or lower rates) limits the Exchange's flexibility to, among other things, make additional investments in infrastructure and advertising, diminishes the ability to remain competitive on transaction fees, and hinders the ability to compete for order flow and market share. Again, while one could debate whether the pricing of non-transaction fees are subject to the same market forces as transaction fees, there is little doubt that subjecting one exchange to a materially different standard than that applied to other exchanges for non-transaction fees leaves that exchange at a disadvantage in its ability to compete with its pricing of transaction fees.

The Proposed Fees Ensure Parity Among Exchange Access Fees, Which Promotes Competition

The Exchange commenced operations in September 2020 and adopted its initial fee schedule, with 1Gb ULL connectivity set at $1,000, 10Gb ULL connectivity fees set at $3,500, and provided the first twenty-five (25) FIX and MEO Ports for free.[66] As a new exchange entrant, the Exchange chose to offer such services at a discounted rate or free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and fee parity, which promotes competition among exchanges. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[67]

The Exchange has not amended any of its non-transaction fees since its launch in September 2022. The Exchange balanced business and competitive concerns with the need to financially compete with the larger incumbent exchanges that charge higher fees for similar connectivity and use that revenue to invest in their technology and other service offerings.

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well as non-transaction fees. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [68]

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *See supra* note 7.

[67] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX. . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX's market share has increased and recently proposed to adopt numerous non-transaction fees, including fees for membership, market data, and connectivity. *See* Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); 96430 (December 1, 2022), 87 FR 75083 (December 7, 2022) (SR–MEMX–2022–32) *and* 95936 (September 27, 2022), 87 FR 59845 (October 3, 2022) (SR–MEMX–2022–26) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[68] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21)).

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [69]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [70] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [71] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [72] In the Revised Review Process and Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [73]

The Exchange believes the competing exchanges' connectivity and port fees are useful examples of alternative approaches to providing and charging for access and demonstrating how such fees are competitively set and constrained. To that end, the Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar connectivity and port access provided by other exchanges with comparable market shares. As such, the Exchange believes that denying its ability to institute fees that allow the Exchange to recoup its costs with a reasonable margin in a manner that is closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

The following table shows how the Exchange's proposed fees remain similar to or less than fees charged for similar connectivity and port access provided by other exchanges with similar market share. Each of the connectivity or port rates in place at competing exchanges were filed with the Commission for immediate effectiveness and remain in place today.

| Exchange | Type of connection or port | Monthly fee (per connection or per port) |
|---|---|---|
| MIAX Pearl Equities (as proposed) (market share of 1.49% for the month of May 2023) [a]. | 1Gb ULL connection | $2,500. |
| | 10Gb ULL connection | $8,000. |
| | FIX and MEO Ports | 1–5 ports: FREE.<br>6 ports or more: $450 per port. |
| | FXD Ports (*i.e.,* Drop Copy Ports) | FREE. |
| MEMX [b] (market share of 2.63% for the month of May 2023) [c] | 1Gb connection | Not available. |
| | xNet Physical connection | $6,000 per connection. |
| | Order Entry Ports | $450 per port. |
| | Drop Copy Ports | $450 per port. |
| NASDAQ PSX LLC (''PSX'') [d] (market share of 0.37% for the month of May 2023) [e]. | 1Gb connection | $2,500 per connection (plus $1,500 installation fee). |
| | 10Gb connection | $7,500 per connection (plus $1,500 installation fee). |
| | Order Entry Ports | $400 per port. |
| | Drop Copy Ports | $400 per port. |
| NASDAQ BX LLC (''BX'') [f] (market share of 0.34% for the month of May 2023) [g]. | 1Gb Ultra connection | $2,500 per connection (plus $1,500 installation fee) |
| | 10Gb Ultra connection. | $15,000 (plus $1,500 installation fee). |
| | Order Entry Ports | $500 per port. |
| | Drop Copy Ports | $500 per port. |

[a] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/.*
[b] *See* MEMX Fee Schedule, Connectivity and Application Sessions, *available athttps://info.memxtrading.com/fee-schedule/.*
[c] *See supra* note a.
[d] *See* PSX Pricing Schedule, *available at https://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing; and* PSX Rules, General 8: Connectivity, Section 2, Direct Connectivity.
[e] *See supra* note a.
[f] *See* BX Pricing Schedule, *available at https://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing; and* BX Rules, General 8: Connectivity, Section 2, Direct Connectivity.
[g] *See supra* note a.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available equity exchanges. Market participants may choose to become a member of one or more equities exchanges based on the market participant's assessment of the business opportunity relative to the costs of the Exchange. With this, there is elasticity of demand for exchange membership. As an example, one Market Maker of

[69] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[70] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[71] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca-2006–21).

[72] *Id.*

[73] *See* Staff Guidance, *supra* note 24.

MIAX Pearl Options terminated their membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes by MIAX Pearl Options.

It is not a requirement for market participants to become members of all equities exchanges; in fact, certain market participants conduct an equities business as a member of only one market.[74] A very small number of market participants choose to become a member of all sixteen (16) equities exchanges. Most firms that actively trade on equities markets are not currently Equity Members of the Exchange and do not purchase connectivity or port services at the Exchange. Connectivity and ports are only available to Equity Members or service bureaus, and only an Equity Member may utilize a port.[75]

BOX recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[76] MIAX Pearl Equities currently has 50 Equity Members. Also, MEMX noted in a January 2022 filing that it had only 66 members, and, based on publicly available information regarding a sample of the Exchange's competitors, NYSE has 142 members, Cboe BZX has 140 members, and Investors Exchange LLC (''IEX'') has 133 members.[77] MIAX Pearl Options and its affiliated options markets, MIAX and MIAX Emerald, have a total of 46 members. Of those 46 total members, 37 are members of all three affiliated options markets, two are members of only two affiliated options markets, and seven are members of only one affiliated options market. The Exchange believes that significant differences in membership numbers describes by the Exchange, BOX, and MEMX demonstrate that firms can, and do, select which exchanges they wish to access, and, accordingly, exchanges must take competitive considerations into account when setting fees for such access. The Exchange also notes that no firm is an Equity Member of the Exchange only. The above data evidences that a broker-dealer need not have direct connectivity to all exchanges, let alone the Exchange and its affiliates, and broker-dealers may elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool.

Not only is there not an actual regulatory requirement to connect to every equities exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the broker-dealer membership analysis of exchanges discussed above. Indeed, broker-dealers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective members would not connect and existing members would disconnect from the Exchange. The decision to become a member of an exchange, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in equities securities; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services.

In lieu of becoming a member at each exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become an Equity Member at—or establish connectivity to—the Exchange.[78] If the Exchange is not at the national best bid and offer (''NBBO''),[79] the Exchange will route an order to any away market that is at the NBBO to ensure that the order was executed at a superior price and prevent a trade-through.[80]

With respect to the submission of orders, Equity Members may also choose not to purchase any connection from the Exchange, and instead rely on the port of a third party to submit an order. For example, a third-party broker-dealer Equity Member of the Exchange may be utilized by a retail investor to submit orders into an exchange. An institutional investor may utilize a broker-dealer, a service bureau,[81] or request sponsored access [82] through a member of an exchange in order to submit a trade directly to an equities exchange.[83] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange.

Non-Member third-parties, such as service bureaus and extranets, resell the Exchange's connectivity. This indirect connectivity is another viable alternative for market participants to trade on the Exchange without connecting directly to the Exchange (and thus not pay the Exchange's connectivity fees), which alternative is already being used by non-Equity Members and further constrains the price that the Exchange is able to charge for connectivity and other access fees to its market. The Exchange notes that it could, but chooses not to, preclude market participants from reselling its connectivity. Unlike other exchanges, the Exchange also does not currently assess fees on third-party resellers on a per customer basis (*i.e.,* fees based on the number of firms that connect to the Exchange indirectly via the third-

[74] BOX recently adopted an electronic market maker trading permit fee. *See* Securities Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17). In that proposal, BOX stated that, ''. . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. [BOX] again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on [BOX].'' Also in 2022, MEMX established a monthly membership fee. *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). In that proposal, MEMX reasoned that that there is value in becoming a member of the exchange and stated that it believed that the proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange'' and that ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.''

[75] Service Bureaus may obtain ports on behalf of Equity Members.

[76] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17).

[77] *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19).

[78] *See* 17 CFR 242.611.

[79] *See* Exchange Rule 1901.

[80] Equity Members may elect to not route their orders by utilizing the Do Not Route or Post Only order type instructions. *See* Exchange Rule 2614(c)(1) and (2).

[81] Service Bureaus provide access to market participants to submit and execute orders on an exchange. On the Exchange, a Service Bureau may be an Equity Member. Some Equity Members utilize a Service Bureau for connectivity and that Service Bureau may not be an Equity Member. Some market participants utilize a Service Bureau who is an Equity Member to submit orders.

[82] Sponsored Access is an arrangement whereby an Equity Member permits its customers to enter orders into an exchange's system that bypass the Equity Member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[83] This may include utilizing a floor broker and submitting the trade to an equities trading floor.

party).[84] Indeed, the Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own.[85] Particularly, in the event that a market participant views the Exchange's direct connectivity and access fees as more or less attractive than competing markets, that market participant can choose to connect to the Exchange indirectly or may choose not to connect to the Exchange and connect instead to one or more of the other 15 equities markets. Accordingly, the Exchange believes that the proposed fees are fair and reasonable and constrained by competitive forces.

The Exchange is obligated to regulate its Equity Members and secure access to its environment. To properly regulate its Equity Members and secure the trading environment, the Exchange takes measures to ensure access is monitored and maintained with various controls. Connectivity and ports are methods utilized by the Exchange to grant Equity Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be an Equity Member, and is approved for membership by the Exchange, the Equity Member is granted trading rights to enter orders and/or quotes into Exchange through secure connections.

Again, there is no legal or regulatory requirement that a market participant become an Equity Member of the Exchange, or, if it is an Equity Member, to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Equity Members may freely choose to rely on one or many connections, depending on their business model. This is again evidenced by the fact that one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership effective January 1, 2023 as a direct result of the proposed connectivity and port fee changes by MIAX Pearl Options. If a market participant chooses to become an Equity Member, they may then choose to purchase connectivity beyond the one connection that is necessary to quote or submit orders on the Exchange. Members may freely choose to rely on one or many connections, depending on their business model.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity and port services, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Equity Members—both generally and in relation to other Equity Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Equity Members and competition among Equity Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of section 19(b)(1) under the Act,[86] and Rule 19b–4 thereunder,[87] with respect to the types of information exchanges should provide when filing fee changes, and section 6(b) of the Act,[88] which requires, among other things, that exchange fees be reasonable and equitably allocated,[89] not designed to permit unfair discrimination,[90] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[91] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[92] The Exchange reiterates that the legacy exchanges with whom the Exchange vigorously competes for order flow and market share, were not subject to any such diligence or transparency in setting their baseline non-transaction fees, most of which were put in place before the Revised Review Process and Staff Guidance.

As detailed below, the Exchange recently calculated its aggregate annual costs for providing physical 1Gb and 10Gb ULL connectivity to the Exchange at $18,331,650 combined ($17,726,799 for 10Gb ULL connectivity and $604,851 for 1Gb connectivity) (or approximately $1,527,637 per month for combined connectivity costs, rounded to the nearest dollar when dividing the combined annual cost by 12 months). The Exchange also recently calculated its aggregate annual costs for providing FIX and MEO Ports at $3,951,993 combined ($911,998 for FIX Ports and $3,039,995 for MEO Ports) (or approximately $329,333 per month for combined FIX and MEO Port costs, rounded to the nearest dollar when dividing the combined annual cost by 12 months). In order to cover a portion of the aggregate costs of providing connectivity to its Users (both Equity Members and non-Equity Members[93]) going forward, as described below, the Exchange proposes to modify its Fee Schedule as described above.

In 2020, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[94] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and

[84] *See, e.g.,* Nasdaq Price List—U.S. Direct Connection and Extranet Fees, *available at,* US Direct-Extranet Connection (*nasdaqtrader.com*); *and* Securities Exchange Act Release Nos. 74077 (January 16, 2022), 80 FR 3683 (January 23, 2022) (SR–NASDAQ–2015–002); *and* 82037 (November 8, 2022), 82 FR 52953 (November 15, 2022) (SR–NASDAQ–2017–114).

[85] The Exchange notes that resellers, such as SFTI, are not required to publicize, let alone justify or file with the Commission their fees, and as such could charge the market participant any fees it deems appropriate (including connectivity fees higher than the Exchange's connectivity fees), even if such fees would otherwise be considered potentially unreasonable or uncompetitive fees.

[86] 15 U.S.C. 78s(b)(1).

[87] 17 CFR 240.19b–4.

[88] 15 U.S.C. 78f(b).

[89] 15 U.S.C. 78f(b)(4).

[90] 15 U.S.C. 78f(b)(5).

[91] 15 U.S.C. 78f(b)(8).

[92] *See* Staff Guidance, *supra* note 24.

[93] Types of market participants that obtain connectivity services from the Exchange but are not Equity Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services, and thus, may access application sessions on behalf of one or more Equity Members. Extranets offer physical connectivity services to Equity Members and non-Equity Members.

[94] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and the affiliated markets for each cost driver as part of its 2023 budget review process. The 2023 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[95] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (60.0% of total expense amount allocated to 10Gb ULL connectivity), with smaller allocations to FIX Ports (1.2%) and MEO Ports (3.8%), and the remainder to the provision of other connectivity, other ports, transaction execution, membership services and market data services (35%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Equity Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Equity Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange is left with its best efforts attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive updated Cost Analysis, which was again recently further refined, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity and port services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity and port services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity and port services. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide 1Gb

[95] For example, MIAX Pearl Equities maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX maintains 24 matching engines and MIAX Emerald maintains 12 matching engines.

and10Gb ULL connectivity, as well as FIX and MEO Ports, is $1,856,970, as further detailed below.

Lastly, the Exchange notes that, based on: (i) the total expense amounts contained in this filing (which are 2023 projected expenses), and (ii) the total expense amounts contained in the related MIAX Pearl Options filing (also 2023 projected expenses), MIAX PEARL, LLC's total costs have increased at a greater rate over the last three years than the total costs of MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is also reflected in the total costs reported in MIAX PEARL, LLC's Form 1 filings over the last three years, when comparing MIAX PEARL, LLC to MIAX PEARL, LLC's affiliated exchanges, MIAX and MIAX Emerald. This is primarily because that MIAX PEARL, LLC operates two markets, one for options and one for equities, while MIAX and MIAX Emerald each operate only one market. This is also due to higher current expense for MIAX PEARL, LLC for 2022 and 2023, due to a hardware refresh (*i.e.,* replacing old hardware with new equipment) for MIAX Pearl Options, as well as higher costs associated with MIAX Pearl Equities due to greater development efforts to grow that newer marketplace, all of which are discussed in more detail below. MIAX PEARL, LLC confirms that there is no double counting of expenses between the options and equities platform of MIAX PEARL, LLC; the greater expense amounts of MIAX PEARL, LLC (relative to its affiliated exchanges, MIAX and MIAX Emerald) is solely attributed to the unique factors of MIAX PEARL, LLC discussed above.

Costs Related to Offering Physical 1Gb and 10Gb ULL Connectivity

The following charts detail the individual line-item costs considered by the Exchange to be related to offering physical dedicated 1Gb and 10Gb ULL connectivity via an unshared network as well as the percentage of the Exchange's overall costs that such costs represent for each cost driver (*e.g.,* as set forth below, the Exchange allocated approximately 47.6% of its overall Human Resources cost to offering physical 1Gb and 10Gb ULL connectivity).

10Gb ULL Connectivity

| Cost drivers | Allocated annual cost [h] | Allocated monthly cost [i] | Percent of all |
|---|---|---|---|
| Human Resources | $5,936,741 | $494,728 | 46.1 |
| Connectivity (external fees, cabling, switches, etc.) | 69,451 | 5,788 | 60.0 |
| Internet Services and External Market Data | 1,818,808 | 151,567 | 72.5 |
| Data Center | 1,052,797 | 87,733 | 60.0 |
| Hardware and Software Maintenance and Licenses | 642,112 | 53,509 | 58.0 |
| Depreciation | 3,448,206 | 287,351 | 73.6 |
| Allocated Shared Expenses | 4,758,684 | 396,557 | 48.6 |
| Total | 17,726,799 | 1,477,233 | 54 |

[h] The Annual Cost includes figures rounded to the nearest dollar.
[i] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

1Gb ULL Connectivity

| Cost drivers | Allocated annual cost [j] | Allocated monthly cost [k] | Percent of all |
|---|---|---|---|
| Human Resources | $202,566 | $16,880 | 1.6 |
| Connectivity (external fees, cabling, switches, etc.) | $2,370 | $197 | 2.0% |
| Internet Services and External Market Data | 62,059 | 5,172 | 2.5 |
| Data Center | 35,922 | 2,993 | 2.0 |
| Hardware and Software Maintenance and Licenses | 21,909 | 1,826 | 2.0 |
| Depreciation | 117,655 | 9,805 | 2.5 |
| Allocated Shared Expenses | 162,370 | 13,531 | 1.7 |
| Total | 604,851 | 50,404 | 1.8 |

[j] *See supra* note h.
[k] *See supra* note i.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering physical 1Gb and 10Gb ULL connectivity. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for cost drivers differ when compared to the same cost drivers described by the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because MIAX Pearl Equities' cost allocation methodology utilizes the actual projected costs of MIAX Pearl Equities (which are specific to MIAX Pearl Equities, and are independent of the costs projected and utilized by MIAX Pearl Equities' affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

Human Resources

The Exchange notes that it and its affiliated markets have 184 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to

operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the Exchange's network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to connectivity. From that portion allocated to the Exchange that applied to connectivity, the Exchange then allocated weighted average percentages of 58% for 10Gb ULL connectivity and 2.0% for 1Gb connectivity of each employee's time from the above group. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing physical connectivity) and then applied a smaller allocation to such employees (less than 37%).

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing 1Gb and 10Gb ULL connectivity: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 58% for 10Gb ULL connectivity and 2.0% for 1Gb ULL connectivity of each of their employee's time assigned to the Exchange for 10Gb ULL connectivity, as stated above. Employees from these departments perform numerous functions to support 10Gb ULL connectivity, such as the installation, re-location, configuration, and maintenance of 10Gb ULL connections and the hardware they access. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting 10Gb ULL connectivity and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support 10Gb ULL connectivity, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the 10Gb ULL connectivity related Human Resources costs to the extent that they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Lastly, the Exchange notes that the above allocation for 10Gb ULL connectivity is greater than its affiliate options exchanges as MIAX Pearl Equities allocated 46.1% of its Human Resources expense towards 10Gb ULL connectivity, while MIAX, MIAX Pearl Options and MIAX Emerald allocated 25%, 26.3% and 28%, respectively, to the same category of expense. This difference is due to meaningfully more current and anticipated business and technology initiatives dedicated to MIAX Pearl Equities than its affiliate options exchanges at the time of this filing. These initiatives include: enhancements to routing options, expanding the available order types, adding direct market data connectivity to competing exchanges, and adopting additional risk controls.[96] MIAX Pearl Equities is a relatively new market (launched in September of 2020), and, as a result, more personnel are allocated to work on various business initiatives and enhancements to help the market grow, add new functionality, and expand its product offerings. These technology changes directly impact the Exchange's interface specifications and matching engine which, in turn, impacts connectivity by requiring additional coding, testing, and other updates necessary to accommodate the above initiatives.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost driver includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data

[96] *See, e.g.,* Securities Exchange Act Release Nos. 94301 (February 23, 2022), 87 FR 11739 (March 2, 2022) (SR–PEARL–2022–06) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2617(b) To Adopt Two New Routing Options, and To Make Related Changes and Clarifications to Rules 2614(a)(2)(B) and 2617(b)(2)); 94851 (May 4, 2022), 87 FR 28077 (May 10, 2022) (SR–PEARL–2022–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 532, Order Price Protection Mechanisms and Risk Controls); 95298 (July 15, 2022), 87 FR 43579 (July 21, 2022) (SR–PEARL–2022–29) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC To Amend the Route to Primary Auction Routing Option Under Exchange Rule 2617(b)(5)(B)); 95679 (September 6, 2022), 87 FR 55866 (September 12, 2022) (SR–PEARL–2022–34) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2614, Orders and Order Instructions, To Adopt the Primary Peg Order Type); 96205 (November 1, 2022), 87 FR 67080 (November 7, 2022) (SR–PEARL–2022–43) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2614, Orders and Order Instructions and Rule 2618, Risk Settings and Trading Risk Metrics To Enhance Existing Risk Controls); 96905 (February 13, 2023), 88 FR 10391 (February 17, 2023) (SR–PEARL–2023–03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2618 To Add Optional Risk Control Settings); 97236 (March 31, 2023), 88 FR 20597 (April 6, 2023) (SR–PEARL–2023–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules 2617 and 2626 Regarding Retail Orders Routed Pursuant to the Route to Primary Auction Routing Option).

to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

The Exchange relies on various connectivity providers for connectivity to the entire U.S. equities industry, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 1Gb and 10Gb ULL connectivity. Specifically, the Exchange utilizes connectivity providers to connect to other national securities exchanges, the NASDAQ UTP and CTA/CQ Plans. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Connectivity provided by these service providers is critical to the Exchanges daily operations and performance of its System Networks to which market participants connect to via 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or the NASDAQ UTP and CTA/CQ Plans and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its connectivity provider expense and recoups that expense, in part, by charging for 1Gb and 10Gb ULL connectivity.

Internet Services and External Market Data

The next cost driver consists of internet Services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami.

External market data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange included external market data fees to the provision of physical connectivity as such market data is necessary here to offer certain services related to such connectivity, such as certain risk checks that are performed prior to execution, and checking for other conditions (*e.g.,* limit order price protection, trading collars).[97] Thus, as market data from other exchanges is consumed at the matching engine level, (to which physical connectivity provides access to) in order to validate orders before additional entering the matching engine or being executed, the Exchange believes it is reasonable to allocate an amount of such costs to 1Gb ULL and 10Gb ULL connectivity.

The Exchange relies on content service providers for data feeds for the entire U.S. equities industry, as well as content for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via 10Gb ULL connectivity. Specifically, the Exchange utilizes content service providers to receive market data from Nasdaq UTP, CTA and CQ Plans, as well as from other exchanges and market data providers. The Exchange understands that these service providers provide services to most, if not all, of the other U.S. exchanges and other market participants. Market data provided these service providers and competing exchanges is critical to the Exchange's daily operations and performance of its System Networks to which market participants connect to via 1Gb ULL and 10Gb ULL connectivity. Without these services providers, the Exchange would not be able to receive market data and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its content service provider expense and recoups that expense, in part, by charging for 1Gb ULL and 10Gb ULL connectivity.

Lastly, the Exchange notes that the actual dollar amounts allocated as part of the second step of the 2023 budget process differ among the Exchange and its affiliated markets for the internet Services and External Market Data cost driver, even though, but for MIAX Emerald, the allocation percentages are generally consistent across markets (*e.g.,* MIAX Emerald, MIAX, MIAX Pearl Options and MIAX Pearl Equities allocated 84.8%, 73.3%, 73.3% and 72.5%, respectively, to the same cost driver). This is because: (i) a different percentage of the overall internet Services and External Market Data cost driver was allocated to MIAX Emerald and its affiliated markets due to the factors set forth under the first step of the 2023 budget review process described above (unique technical architecture, market structure, and business requirements of each marketplace); and (ii) MIAX Emerald itself allocated a larger portion of this cost driver to 10Gb ULL connectivity because of recent initiatives to improve the latency and determinism of its systems. The Exchange notes while the percentage MIAX Emerald allocated to the internet Services and External Market Data cost driver is greater than the Exchange and its other affiliated markets, the overall dollar amount allocated to the Exchange under the initial step of the 2023 budget process is lower than its affiliated markets.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (62%) to physical 1Gb and 10Gb ULL connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity by market participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

Lastly, MIAX Emerald, MIAX, MIAX Pearl Options and MIAX Pearl Equities allocated 61.9%, 60.60%, 60.60% and 60%, respectively, to the Data Center cost driver. However, MIAX Pearl Equities was allocated a larger dollar amount under the first step of the 2023 budget process. This resulted in MIAX Pearl Equities allocating a larger dollar amount to its Data Center cost driver than its affiliated options markets, despite nearly identical percentage allocations. The dollar amount of MIAX Pearl Equities' Data Center cost driver is higher than its affiliated options markets due to the factors set forth under the first step of the 2023 budget review process described above (unique technical architecture, market structure, and business requirements of each

[97] This allocation may differ from MIAX Pearl Options due to the different amount of proprietary market data feeds purchased by MIAX Pearl Equities compared to MIAX Pearl Options. For options market data, MIAX Pearl Options primarily relies on data purchased from OPRA. For equities market data, MIAX Pearl Equities does not solely rely on data purchased from the consolidated tape plans (*e.g.,* Nasdaq UTP, CTA, and CQ plans), but rather purchases multiple proprietary market data feeds from other equities exchanges. *See, e.g.,* Exchange Rule 2613 (setting forth the data feeds MIAX Pearl Equities subscribes to for each equities exchange and trading center).

marketplace). As described herein, MIAX Pearl Equities connects directly to multiple individual equities exchanges for trading and market data. This, in turn, requires additional hardware and software requiring an increased data center footprint. MIAX Pearl Equities also maintains an additional gateway to support market participant's access demands and maintains 24 matching engines, double the number of matching engines on MIAX Emerald and MIAX Pearl Options.[98] The additional gateway coupled with the higher number of matching engines results in higher data center costs.

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.[99] The Exchange notes that this allocation is greater than MIAX and MIAX Emerald options exchanges as MIAX Pearl Equities allocated 58% of its Hardware and Software Maintenance and License expense towards 10Gb ULL connectivity, while MIAX and MIAX Emerald allocated 49.8% and 50.9%, respectively, to the same category of expense. This difference in allocation is because MIAX Pearl Equities maintains software licenses that are unique to its trading platform and used only for the trading of equity securities. The cost for these licenses cannot be shared with MIAX Pearl Equities' affiliated options markets because each of those platforms trade only options, not equities. MIAX Pearl Equities' affiliates are able to share the cost of many of their software licenses among the multiple options platforms (thus lowering the cost to each individual options platform), whereas MIAX Pearl Equities cannot share such cost and, therefore, bears the entire cost. Also, MIAX Pearl Options allocated a higher percentage of the same category of expense (58.6%) towards its Hardware and Software Maintenance and License expense for 10Gb ULL connectivity, which MIAX Pearl Options explains in its own proposal to amend its 10Gb ULL connectivity fees.

Depreciation

All physical assets, software, and hardware used to provide 1Gb ULL and 10Gb ULL connectivity, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to 10Gb ULL connectivity in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to 10Gb ULL connectivity. As noted above, the Exchange allocated 73.6% of its allocated depreciation costs to providing physical 10Gb ULL connectivity and 2.5% of all depreciation costs to providing 1Gb connectivity. The Exchange also notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

Lastly, the Exchange notes that this allocation is greater than its affiliate options exchanges as MIAX Pearl Equities allocated 73.6% of its Depreciation expense towards 10Gb ULL connectivity, while MIAX, MIAX Pearl Options and MIAX Emerald allocated 61.6%, 58.2% and 63.8%, respectively, to the same category of expense. This is due to MIAX Pearl Equities being a newer market and having newer physical assets and software subject to depreciation than its affiliate options exchanges. The Exchange's affiliate options exchanges are older markets that have more software and equipment that have been fully depreciated when compared to the newer software and hardware currently being depreciated by MIAX Pearl Equities at higher rates.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to overall physical connectivity costs. These general shared costs are integral to exchange operations, including its ability to provide physical connectivity. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[100] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to 10Gb ULL connectivity pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including connectivity. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* 10Gb ULL connectivity as a sub-category of connectivity. In determining the percentage of general shared expenses allocated to connectivity that ultimately apply to 10Gb ULL connectivity, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to 10Gb ULL connectivity. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore

[98] *See supra* note 95. MIAX Pearl Options also provides an additional gateway but only maintains 12 matching engines. MIAX and MIAX Emerald do not provide an additional gateway and maintain 24 and 12 matching engines, respectively.

[99] This allocation may be greater than the Exchange's affiliated markets, specifically MIAX and MIAX Emerald, because, unlike MIAX and MIAX Emerald, MIAX Pearl Equities and MIAX Pearl Options both maintain an additional gateway to accommodate their Members' and Equity Members' access and connectivity needs. This added gateway contributes to the difference in allocation percentages between MIAX Pearl Equities and MIAX Pearl Options and MIAX and MIAX Emerald.

[100] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors to providing physical connectivity. The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as 10Gb ULL connectivity.

The Exchange notes that the 50% allocation of general shared expenses for physical 10Gb ULL connectivity is higher than that allocated to general shared expenses for MEO and FIX Ports. This is based on its allocation methodology that weighted costs attributable to each core service. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Center, as described above), FIX and MEO Ports do not require as many broad or indirect resources as other core services.

* * * * *

Approximate Cost Per 1Gb ULL and 10Gb ULL Connection Per Month

After determining the approximate allocated monthly cost related to 10Gb connectivity, the, total monthly cost for 10Gb ULL connectivity of $1,477,233 was divided by the number of physical 10Gb ULL connections the Exchange maintained at the time that proposed pricing was determined (90), to arrive at a cost of approximately $16,414 per month, per physical 10Gb ULL connection. The total monthly cost for 1Gb connectivity of $50,404 was divided by the number of physical 1Gb connections the Exchange maintained at the time that proposed pricing was determined (8), to arrive at a cost of approximately $6,301 per month, per physical 1Gb connection. Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, *i.e.,* actual number of 1Gb ULL and 10Gb ULL connections.

* * * * *

Costs Related to Offering FIX and MEO Ports

The following chart details the individual line-item costs considered by the Exchange to be related to offering FIX and MEO Ports as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 22.4% of its overall Human Resources cost to offering FIX and MEO Ports).

FIX PORTS

| Cost drivers | Allocated annual cost [l] | Allocated monthly cost [m] | Percent of all |
|---|---|---|---|
| Human Resources | $665,726 | $55,476 | 5.2 |
| Connectivity (external fees, cabling, switches, etc.) | $535 | $45 | 0.5 |
| Internet Services and External Market Data | 11,574 | 965 | 0.5 |
| Data Center | 20,262 | 1,689 | 1.2 |
| Hardware and Software Maintenance and Licenses | 5,108 | 426 | 0.5 |
| Depreciation | 92,114 | 7,676 | 2.0 |
| Allocated Shared Expenses | 116,679 | 9,723 | 1.2 |
| Total | 911,998 | 76,000 | 2.8 |

[l] *See supra* note h (describing rounding of Annual Costs).
[m] *See supra* note i (describing rounding of Monthly Costs based on annual costs).

MEO PORTS

| Cost drivers | Allocated annual cost [n] | Allocated monthly cost [o] | Percent of all |
|---|---|---|---|
| Human Resources | $2,219,088 | $184,924 | 17.2 |
| Connectivity (external fees, cabling, switches, etc.) | 1,782 | 149 | 1.5 |
| Internet Services and External Market Data | 38,582 | 3,215 | 1.5 |
| Data Center | 67,538 | 5,628 | 3.8 |
| Hardware and Software Maintenance and Licenses | 17,026 | 1,419 | 1.5 |
| Depreciation | 307,048 | 25,587 | 6.6 |
| Allocated Shared Expenses | 388,931 | 32,411 | 4.0 |
| Total | 3,039,995 | 253,333 | 9.3 |

[n] *See supra* note h (describing rounding of Annual Costs). The Exchange notes that costs to provide MEO Ports are higher than the Exchange's costs to provide FIX Ports because it is more expensive to maintain and support the MEO network due to its high performance capabilities and supporting infrastructure (including employee support). The MEO interface is a customizable binary interface that the Exchange developed in-house and maintains on its own. The FIX interface is the industry standard for simple order entry, which requires less development, maintenance, and support than the MEO interface. The MEO interface provides best-in-class system throughput and capacity. Users of MEO Ports, which are primarily Equity Market Makers, consume the most bandwidth and resources of the network via MEO Ports. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers, resulting in greater cost to provide and maintain MEO ports.
[o] *See supra* note i (describing rounding of Monthly Costs based on annual costs).

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering FIX and MEO Ports. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets in their similar proposed fee changes for connectivity and ports. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange, and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences.

Human Resources

With respect to FIX and MEO Ports, the Exchange calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing FIX and MEO Ports and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). Just as described above for 10Gb ULL connectivity, the estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing FIX and MEO Ports and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing FIX and MEO Ports and maintaining performance thereof. This includes personnel from the following Exchange departments that are predominately involved in providing FIX and MEO Ports: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. The Exchange notes that senior level executives were allocated Human Resources costs to the extent they are involved in overseeing tasks specifically related to providing Full Service MEO Ports. Senior level executives' were only allocated Human Resources costs to the extent that they are involved in managing personnel responsible for tasks related to providing FIX and MEO Ports. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Lastly, the Exchange notes that the Human Resource allocation for MEO Ports is greater than its Human Resource allocation for FIX Ports as MIAX Pearl Equities allocated 5.2% of its Human Resource expense towards FIX Ports and 17.2% of its Human Resource expense towards MEO Ports. This is because the MEO interface is a customized binary interface that the Exchange developed in-house and maintains on its own. The FIX interface is the industry standard for simple order entry which requires less development, maintenance, and support than the MEO interface. The MEO interface is performance oriented and designed to meet the needs of more latency sensitive Equity Members. Due to the in-house development of the MEO interface, the Exchange was required to expend more internal personnel to support the MEO interface than the FIX interface. Because of the materially higher cost associated with maintaining and supporting MEO Ports versus FIX Ports, the Exchange allocates a materially higher percentage of Human Resource expense to MEO Ports versus FIX Ports.

Connectivity (external fees, cabling, switches, etc.)

The Connectivity cost driver includes external fees paid to connect to other exchanges, cabling and switches, as described above.

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. For purposes of FIX and MEO Ports, the Exchange also includes a portion of its costs related to external market data. External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange includes external market data fees to the provision of FIX and MEO Ports as such market data is also necessary here (in addition to physical connectivity) to offer certain services related to such ports, such as validating orders on entry against the national best bid and national best offer and checking for other conditions (*e.g.,* whether a symbol is halted or subject to a short sale circuit breaker).[101] Thus, as market data from other exchanges is consumed at the port level in order to validate orders before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to FIX and MEO Ports.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

Hardware and Software Maintenance and Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange, as described above.

Depreciation

The vast majority of the software the Exchange uses to provide FIX and MEO Ports has been developed in-house and the cost of such development, which takes place over an extended period of time and includes not just development work, but also quality assurance and testing to ensure the software works as intended, is depreciated over time once the software is activated in the production environment. Hardware used to provide FIX and MEO Ports includes equipment used for testing and monitoring of order entry infrastructure and other physical equipment the Exchange purchased and is also depreciated over time.

All hardware and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 8.6% of all depreciation costs to providing FIX and MEO Ports. The Exchange notes that this allocation differs from its affiliated markets due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost.

[101] This allocation may differ from MIAX Pearl Options due to the different amount of proprietary market data feeds the Exchange purchases for its options and equities trading platforms. MIAX Pearl Options primarily relies on data purchased from OPRA. MIAX Pearl Equities does not solely rely on data purchased from the consolidated tape plans (*e.g.,* Nasdaq UTP, CTA, and CQ plans), but rather purchases multiple proprietary market data feeds from other equities exchanges. *See, e.g.,* Exchange Rule 2613 (setting forth the data feeds the Exchange subscribes to for each equities exchange and trading center). The Exchange separately notes that MEMX separately allocated 7.5% of its external market data costs to providing physical connectivity.

Lastly, the Exchange notes that the Depreciation allocation for MEO Ports is greater than the Depreciation allocation for FIX Ports as MIAX Pearl Equities allocated 2.00% of its Depreciation expense towards FIX Ports and 6.60% of its Depreciation expense towards MEO Ports. As discussed above, this is because the MEO interface is a customized binary interface that the Exchange developed in-house and maintains on its own. The FIX interface is the industry standard for simple order entry which requires less development, maintenance, and support than the MEO interface. The Exchange maintains more dedicated hardware per port for the MEO interface compared to the FIX interface; MEO Ports sit on their own core server, whereas for the FIX interface, three (3) to five (5) connections may go onto a single server. As a result, the MEO interface is supported by more dedicated in-house hardware and software than the FIX interface that is subject to depreciation. Thus, there is a greater amount of equipment supporting the MEO interface than the FIX interface, resulting in higher depreciation costs than the FIX interface.

Allocated Shared Expenses

Finally, a portion of general shared expenses was allocated to overall FIX and MEO Ports costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide application sessions. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 20% of the overall cost for directors was allocated to providing FIX and MEO Ports. The Exchange notes that the 5.2% allocation of general shared expenses for FIX and MEO Ports is lower than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While FIX and MEO Ports have several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), 1Gb and 10Gb ULL connectivity requires a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange.

Lastly, the Exchange notes that the Allocated Shared Expense allocation for MEO Ports is greater than the same allocation for FIX Ports as MIAX Pearl Equities allocated 1.20% of its Allocated Shared Expense towards FIX Ports and 4.00% of its Allocated Shared Expense towards MEO Ports. As discussed above, this is because the MEO interface is a customized binary interface that the Exchange developed in-house and maintains on its own. The FIX interface is the industry standard for simple order entry which requires less development, maintenance, and support than the MEO interface. The MEO interface is performance oriented and designed to meet the needs of more latency sensitive Equity Members. This required more internal personnel and resources to support than the FIX interface. Because of the materially higher cost associated with maintaining and supporting MEO Ports versus FIX Ports, the Exchange allocates a materially higher percentage of Allocated Shared expense to MEO Ports versus FIX Ports, which is a less complex, standardized solution.

* * * * *

Approximate Cost Per FIX and MEO Port Per Month

The total monthly cost allocated to FIX Ports of $76,000 was divided by the number of chargeable FIX Ports the Exchange maintained at the time that proposed pricing was determined (142), to arrive at a cost of approximately $535 per month, per FIX Port (rounded to the nearest dollar when dividing the approximate monthly cost by the number of FIX Ports). The total monthly cost allocated to MEO Ports of $253,333 was divided by the number of chargeable MEO Ports the Exchange maintained at the time that proposed pricing was determined (336), to arrive at a cost of approximately $754 per month, per MEO Port (rounded to the nearest dollar when dividing the approximate monthly cost by the number of MEO Ports).

* * * * *

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or FIX and MEO Ports) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (60%) to 1Gb and 10Gb ULL connectivity given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 25% to FIX and MEO Ports and the remaining 15% was allocated to transactions and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group, outside of a smaller allocation of 37% for 1Gb and 10Gb ULL connectivity of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (less than 21%) across a wider range of personnel groups in order to allocate Human Resources costs to providing FIX and MEO Ports. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain FIX and MEO Ports but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 47.6% of its personnel costs to providing physical connections and 22.4% of its personnel costs to providing FIX and MEO Ports, for a total allocation of 70% Human Resources expense to provide these specific connectivity services. In turn, the Exchange allocated the remaining 30% of its Human Resources expense to membership (less than 1%) and transactions and market data (9.5%). Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and FIX and MEO Ports, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the

actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Equity Members and non-Equity Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 85% of the Exchange's overall depreciation and amortization expense to connectivity services (76.185% attributed to 1Gb and 10Gb ULL physical connections and 8.6% to FIX and MEO Ports). The Exchange allocated the remaining depreciation and amortization expense (approximately 15%) toward the cost of providing transaction services, membership services and market data.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or FIX and MEO Ports or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2023 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases.

However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity and port services. Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection(s). The above cost, namely those associated with hardware, software, and human capital, enable the Exchange to measure network performance with nanosecond granularity. These same costs are also associated with time and money spent seeking to continuously improve the network performance, improving the subscriber's experience, based on monitoring and analysis activity. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for connectivity services. Subscribers, particularly those of 10Gb ULL connectivity, expect the Exchange to provide this level of support to connectivity so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

- The Exchange's Cost Analysis estimates the annual cost to provide 10Gb ULL connectivity services will equal $17,726,799. Based on current 10Gb ULL connectivity services usage, the Exchange would generate annual revenue of approximately $9,144,000. This represents a negative margin when compared to the cost of providing 10Gb ULL connectivity services, which will decrease over time.[102]
- The Exchange's Cost Analysis estimates the annual cost to provide 1Gb connectivity services will equal $604,851. Based on current 1Gb connectivity services usage, the Exchange would generate annual revenue of approximately $312,000. This represents a negative margin when compared to the cost of providing 1Gb connectivity services, which will decrease over time.[103]
- The Exchange's Cost Analysis estimates the annual cost to provide FIX Port services will equal $911,998. Based on current FIX Port services usage, the Exchange would generate annual revenue of approximately $388,800. This represents a negative margin when compared to the cost of providing FIX Port services, which will decrease over time.[104]
- The Exchange's Cost Analysis estimates the annual cost to provide MEO Port services will equal $3,039,995. Based on current MEO Port services usage, the Exchange would generate annual revenue of approximately $1,296,000. This represents a negative margin when compared to the cost of providing MEO Port services, which will decrease over time.[105]

Based on the above discussion, even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in excessive

[102] Assuming the U.S. inflation rate continues at its current rate, the Exchange believes that the projected profit margins in this proposal will decrease; however, the Exchange cannot predict with any certainty whether the U.S. inflation rate will continue at its current rate or its impact on the Exchange's future profits or losses. *See, e.g., https://www.usinflationcalculator.com/inflation/current-inflation-rates/* (last visited August 4, 2023).

[103] *Id.*

[104] *Id.*

[105] *Id.*

pricing that deviates from that of other exchanges or supra-competitive profit, when comparing the total expense of the Exchange associated with providing 1Gb and 10Gb ULL connectivity and FIX and MEO Port services versus the total projected revenue of the Exchange associated with those services. In fact, the Exchange will generate negative margins on those connectivity and port services even with the proposed fees.

The Exchange also notes that this the resultant margin differs from the profit margins set forth in similar fee filings by its affiliated markets. This is not atypical among exchanges and is due to a number of factors that differ between these four markets, including: different market models, market structures, and product offerings (equities, options, price-time, pro-rata, simple, and complex); different pricing models; different number of market participants and connectivity subscribers; different maintenance and operations costs, as described in the cost allocation methodology above; different technical architecture (*e.g.,* the number of matching engines per exchange, *i.e.,* MIAX Pearl Equities maintains 24 matching engines while MIAX Pearl Options maintains 12 matching engines); and different maturity phase of the Exchange and its affiliated markets (*i.e.,* start-up versus growth versus more mature). All of these factors contribute to a unique and differing level of profit margin per exchange.

Further, the Exchange proposes to charge rates that are comparable to, or lower than, similar fees for similar products charged by competing exchanges. For example, for 10Gb ULL connectivity, the Exchange proposes a lower fee than the fee charged by BX for its comparable 10Gb Ultra fiber connection ($8,000 per month for the Exchange vs. $15,000 per month for BX).[106] PSX charges comparable rate for its 10Gb connection of $7,500.[107] Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange's affiliated markets leads to slightly different profit margins due to factors outside of the Exchange's control (*i.e.,* more subscribers to 10Gb ULL connectivity on the Exchange than its affiliated markets or vice versa).

MIAX Pearl Equities is one of the newer equities exchange and only commenced operations in September 2020. New entrants like MIAX Pearl Equities propose fees that may help these new entrants recoup their substantial investment in building out costly infrastructure. However, it is not uncommon for start-ups, like MIAX Pearl Equities, to incur losses while they seek to build their businesses.[108] In some cases, as is the case here, these start-ups set their fees purposefully low or offer products at no cost [109] to attract business and build market share so that they can compete with the larger, well established incumbents that already charge higher fees. This is done while incurring losses by investing in future growth. Therefore, it is not uncommon for MIAX Pearl Equities to incur a negative profit margin even with the proposed fees while it continues to build its business and gain traction as a new exchange entrant that competing to attract market share from the larger, established incumbent equities exchanges.

* * * * *

MIAX Pearl Equities has operated at a cumulative net annual loss since it launched operations in 2020.[110] This is due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as low latency connectivity, at lower rates than other exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange does not believe it should now be penalized for seeking to raise its fees as it now needs to upgrade its technology and absorb increased costs. Therefore, the Exchange believes the proposed fees are reasonable because they are based on both relative costs to the Exchange to provide dedicated 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports, the extent to which the product drives the Exchange's overall costs and the relative value of the product, as well as the Exchange's objective to make access to its Systems broadly available to market participants. The Exchange also believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup the Exchange's costs of providing dedicated 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports.

The Exchange notes that its revenue estimate is based on projections and will only be realized to the extent customer activity produces the revenue estimated. As a competitor in the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such projections will be realized. For instance, in order to generate the revenue expected from 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports, the Exchange will have to be successful in retaining existing clients that wish to utilize 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports and/or obtaining new clients that will purchase such access. To the extent the Exchange has mispriced and experiences a net loss in connectivity clients or in transaction activity, the Exchange could experience a net reduction in revenue. While the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning—or seeking to earn—supra-competitive profits. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange is part of a holding company that operates four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, the Investors Exchange LLC (''IEX'') and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings can allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple platforms. The Exchange and its affiliated markets often share a single cost, which results in cost

[106] *See* BX Pricing Schedule, *available at https://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing;* and BX Rules, General 8: Connectivity, Section 2, Direct Connectivity.

[107] *See* PSX Pricing Schedule, *available at https://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing; and* PSX Rules, General 8: Connectivity, Section 2, Direct Connectivity.

[108] *See* Exchange Fee Schedule (offering market data for no cost).

[109] *See, e.g., 5 Successful Companies that Didn't Make a Dollar for 5 Years,* by Drew Hendricks, July 7, 2014, *available at https://www.inc.com/drew-hendricks/5-successful-companies-that-didn-8217-t-make-a-dollar-for-5-years.html.*

[110] The Exchange has incurred a cumulative loss of $83 million since its inception in 2020. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed June 26, 2023, *available at https://www.sec.gov/Archives/edgar/vprr/2300/23007741.pdf.*

efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Exchange believes that Commission Staff should also consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. Further, if Commission Staff is making determinations as to appropriate profit margins in their approval of exchange fees, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect.

Further, as is reflected in the proposal, the Exchange continuously and aggressively works to control its costs as a matter of good business practice. A potential profit margin should not be evaluated solely on its size; that assessment should also consider cost management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone could be used to justify fees increases.

The Proposed Pricing Is Not Unfairly Discriminatory and Provides for the Equitable Allocation of Fees, Dues, and Other Charges

The Exchange believes that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory because they are designed to align fees with services provided and will apply equally to all subscribers.

1Gb and 10Gb ULL Connectivity

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the users of 10Gb ULL connections consume substantially more bandwidth and network resources than users of 1Gb ULL connection. Specifically, the Exchange notes that 10Gb ULL connection users account for more than 99% of message traffic over the network, driving other costs that are linked to capacity utilization, as described above, while the users of the 1Gb ULL connections account for less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have the same business needs for the high-performance network as 10Gb ULL users.

The Exchange's high-performance network and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to several distinct equities markets. To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages to satisfy its record keeping requirements under the Exchange Act.[111] Thus, as the number of messages an entity increases, certain other costs incurred by the Exchange that are correlated to, though not directly affected by, connection costs (*e.g.,* storage costs, surveillance costs, service expenses) also increase. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all market participants' benefit.

FIX and MEO Ports

To achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers during anticipated peak market conditions. The need to support billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. The Exchange must also purchase additional storage capacity on an ongoing basis to ensure it has sufficient capacity to store these messages as part of it surveillance program and to satisfy its record keeping requirements under the Exchange Act.[112] Thus, as the number of connections an Equity Member has increases, the related pull on Exchange resources also increases. The Exchange sought to design the proposed pricing structure to set the amount of the fees to relate to the number of connections a firm purchases, while continuing to provide the first five (5) ports for free. The more connections purchased by an Equity Member likely results in greater expenditure of Exchange resources and increased cost to the Exchange. The Exchange further believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Equity Member their first five (5) ports for free, unlike other equity exchanges referenced above.

*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.

Intra-Market Competition

The Exchange believes the proposed fees will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will allow the Exchange to recoup some of its costs in providing 1Gb and10Gb ULL connectivity as well as FIX and MEO Ports at below market rates to market participants since the Exchange launched operations. As described above, the Exchange has operated at a cumulative net annual loss since it launched operations in 2020 [113] due to providing a low-cost alternative to attract order flow and encourage market participants to experience the high determinism and resiliency of the Exchange's trading Systems. To do so, the Exchange chose to waive the fees for some non-transaction related services and Exchange products or provide them at a very lower fee, which was not profitable to the Exchange. This resulted in the Exchange forgoing revenue it

[111] 17 CFR 240.17a–1 (recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board).

[112] *Id.*

[113] *See supra* note 110.

could have generated from assessing any fees or higher fees. The Exchange could have sought to charge higher fees at the outset, but that could have served to discourage participation on the Exchange. Instead, the Exchange chose to provide a low-cost exchange alternative to the industry, which resulted in lower initial revenues. Examples of this are 1Gb and 10Gb ULL connectivity as well as FIX and MEO Ports, for which the Exchange only now seeks to adopt fees at a level similar to or lower than those of other equity exchanges.

Further, the Exchange does not believe that the proposed fee increase for the 1Gb or 10Gb ULL connection change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. The proposed fees would apply uniformly to all market participants regardless of the number of connections they choose to purchase. The proposed fees do not favor certain categories of market participants in a manner that would impose an undue burden on competition.

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, Exchange personnel has been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange does not believe the proposed fees for connectivity services would negatively impact the ability of Equity Members, non-Equity Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers to compete with other market participants or that they are placed at a disadvantage.

The Exchange does anticipate, however, that some market participants may reduce or discontinue use of connectivity services provided directly by the Exchange in response to the proposed fees. In fact, as mentioned above, one MIAX Pearl Options Market Maker terminated their MIAX Pearl Options membership on January 1, 2023 as a direct result of the proposed fee changes for that market.[114] The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, market participants are not forced to connect to all exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. There are other markets of which market participants may connect to trade equities at higher rates than the Exchange's. There is also a range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Market participants are free to choose which exchange or reseller to use to satisfy their business needs. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

* * * * *

In conclusion, as discussed thoroughly above, the Exchange regrettably believes that the application of the Revised Review Process and Staff Guidance has adversely affected inter-market competition among legacy and non-legacy exchanges by impeding the ability of non-legacy exchanges to adopt or increase fees for their market data and access services (including connectivity and port products and services) that are on parity or commensurate with fee levels previously established by legacy exchanges. Since the adoption of the Revised Review Process and Staff Guidance, and even more so recently, it has become extraordinarily difficult to adopt or increase fees to generate revenue necessary to invest in systems, provide innovative trading products and solutions, and improve competitive standing to the benefit of non-legacy exchanges' market participants. Although the Staff Guidance served an important policy goal of improving disclosures and requiring exchanges to justify that their market data and access fee proposals are fair and reasonable, it has also negatively impacted non-legacy exchanges in particular in their efforts to adopt or increase fees that would enable them to more fairly compete with legacy exchanges, despite providing enhanced disclosures and rationale under both competitive and cost basis approaches provided for by the Revised Review Process and Staff Guidance to support their proposed fee changes.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange received one comment letter on the Initial Proposal, one comment letter on the Second Proposal, and one comment letter on the Fourth Proposal, all from the same

[114] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* note 67. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost. In addition, despite the potential for existing subscribers to terminate connections due to the proposal, the Exchange anticipates its number of subscribers to remain generally static, resulting in an immaterial difference between a best case and worst case scenario.

commenter.[115] In their letters, the sole commenter seeks to incorporate comments submitted on previous Exchange proposals to which the Exchange has previously responded. To the extent the sole commenter has attempted to raise new issues in its letters, the Exchange believes those issues are not germane to this proposal in particular, but rather raise larger issues with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filings. Among other things, the commenter is requesting additional data and information that is both opaque and a moving target and would constitute a level of disclosure materially over and above that provided by any competitor exchanges.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,[116] and Rule 19b–4(f)(2)[117] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–36 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–PEARL–2023–36. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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–PEARL–2023–36 and should be submitted on or before September 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[118]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–18191 Filed 8–23–23; 8:45 am]

**BILLING CODE 8011–01–P**

[115] *See* letter from Brian Sopinsky, General Counsel, Susquehanna International Group, LLP (''SIG''), to Vanessa Countryman, Secretary, Commission, dated February 7, 2023 *and* letters from Gerald D. O'Connell, SIG, to Vanessa Countryman, Secretary, Commission, dated March 21, 2023 and July 24, 2023.

[116] 15 U.S.C. 78s(b)(3)(A)(ii).

[117] 17 CFR 240.19b–4(f)(2).

[118] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98163; File No. SR–FICC–2023–012]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Margin Liquidity Adjustment Charge

August 18, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 3, 2023, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'') and Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules,'' and collectively with the GSD Rules, the ''Rules'')[3] in order to (1) enhance the calculation of the Margin Liquidity Adjustment Charge (''MLA Charge'') in the GSD Rules for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members, (2) revise the language in the GSD Rules and MBSD Rules describing the asset groups/subgroups used in the calculation of the MLA Charge at GSD and MBSD, respectively, and (3) clarify the language in the GSD Rules and MBSD Rules describing the calculation of the MLA Charge at GSD and MBSD, as well as make technical changes in the GSD Rules, each as described in greater detail below.

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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.

[3] Terms not defined herein are defined in the GSD Rules and MBSD Rules, as applicable, *available at www.dtcc.com/legal/rules-and-procedures.*

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

There are three primary components of this proposed rule change. First, FICC is proposing to enhance the calculation of the MLA Charge at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members. Second, FICC is proposing to revise the language in the GSD Rules and MBSD Rules describing the asset groups/subgroups used in FICC's calculation of the MLA Charge at GSD and MBSD, respectively. Third, FICC is proposing to clarify the language in the GSD Rules and MBSD Rules describing the calculation of the MLA Charge at GSD and MBSD, as well as make technical changes in the GSD Rules.

When a Sponsored Member clears through multiple accounts sponsored by multiple Sponsoring Members at GSD, FICC may charge an MLA Excess Amount in addition to the MLA Charge. The MLA Excess Amount is being charged by FICC in order to address any market impact cost that could incur when such Sponsored Member defaults, and each of its Sponsoring Members, in its capacity as the Sponsored Member's guarantor, liquidates net unsettled positions associated with the defaulted Sponsored Member.

FICC currently allocates the MLA Excess Amount across each Sponsoring Member of the Sponsored Member using a market volatility risk-weighted allocation methodology. In order to better align with the position concentration risks arising from Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members, FICC is proposing to enhance its calculation of the MLA Charge for such Sponsored Members.

In addition, FICC is proposing to revise the language in the GSD Rules and MBSD Rules describing the asset groups/subgroups used in FICC's calculation of the MLA Charge at GSD and MBSD, respectively. This proposed change would enable FICC to calculate the MLA Charge at GSD and MBSD using a schedule of asset groups and subgroups that FICC would set and adjust from time to time, rather than as codified in the GSD Rules and MBSD Rules in the manner the asset groups and/or subgroups are today.

Finally, FICC is proposing to modify certain language in the GSD Rules and MBSD Rules to make it clearer as to how the MLA Charge is calculated at GSD and MBSD, as well as make a technical change in the GSD Rules.

(i) Overview of the Required Fund Deposit and the Clearing Fund

FICC, through GSD and MBSD, serves as a central counterparty and provider of clearance and settlement services for transactions in the U.S. government securities and mortgage-backed securities markets.[4] As part of its market risk management strategy, FICC manages its credit exposure to Members by determining the appropriate Required Fund Deposit to the Clearing Fund and monitoring its sufficiency, as provided for in the GSD Rules and MBSD Rules.[5] The Required Fund Deposit serves as each Member's margin. The objective of a Member's Required Fund Deposit is to mitigate potential losses to FICC associated with liquidating a Member's portfolio in the event FICC ceases to act for that Member (hereinafter referred to as a ''default'').[6] The aggregate of all Members' Required Fund Deposits constitutes the Clearing Fund. FICC would access the Clearing Fund should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to FICC caused by the liquidation of that Member's portfolio.

Pursuant to the GSD Rules and MBSD Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by FICC, as identified within the GSD Rules and MBSD Rules.[7] One of these components is the MLA Charge, which is designed to address the risk presented to FICC when a Member's portfolio contains large net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type (referred to herein as ''asset groups'').[8]

(ii) Overview of the MLA Charge

Upon a Member default, GSD Rule 22A (Procedures for When the Corporation Ceases to Act) and MBSD Rule 17 (Procedures for When the Corporation Ceases to Act) each provides FICC with the authority to promptly close out and manage the positions of the defaulted Member and to apply the defaulted Member's collateral. The process of closing out the net unsettled positions of a defaulted Member typically involves effecting market purchases and sales; that is, buying in securities the defaulted Member was obligated to deliver to FICC, and selling out securities the defaulted Member was obligated to receive from FICC and pay for, or otherwise liquidating the position.

FICC may face increased transaction costs when it liquidates the net unsettled positions of a defaulted Member due to the unique characteristics of that Member's portfolio. The transaction costs to FICC to liquidate a defaulted Member's portfolio include market impact costs. Market impact costs are the costs due to the marketability of a security, and generally increase when a portfolio contains large net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type. The MLA Charge is specifically designed to address this risk.

The MLA Charge is designed to address the market impact costs of liquidating a defaulted Member's portfolio that may increase when that portfolio includes large net unsettled positions in a particular group of securities with a similar risk profile or in a particular transaction type. These positions may be more difficult to liquidate because a concentration in that group of securities or in a transaction type could reduce the marketability of those large net unsettled positions. Therefore, such portfolios create a risk that FICC may face increased market impact cost to liquidate that portfolio in the assumed margin period of risk of three Business Days at market prices.

The MLA Charge is calculated to address this increased market impact cost by assessing sufficient margin to mitigate this risk. The MLA Charge is calculated for different asset groups.

[4] GSD also clears and settles certain transactions on securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.

[5] *See* GSD Rule 4 (Clearing Fund and Loss Allocation) and MBSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 3. FICC's market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4).

[6] The GSD Rules and MBSD Rules identify when FICC may cease to act for a Member and the types of actions FICC may take. For example, FICC may suspend a firm's membership with FICC, or prohibit or limit a Member's access to FICC's services, in the event that Member defaults on a financial or other obligation to FICC. *See* GSD Rule 21 (Restrictions on Access to Services) and MBSD Rule 14 (Restrictions on Access to Services), *supra* note 3.

[7] *Supra* note 3.

[8] With respect to GSD, references herein to ''net unsettled positions'' refer to Net Unsettled Positions, as such term is defined in GSD Rule 1 (Definitions). *Supra* note 3.

Essentially, the calculation is designed to compare the total market value of net unsettled positions in a particular asset group, which FICC would be required to liquidate in the event of a Member default, to the available trading volume of that asset group or equities subgroup in the market.[9] If the market value of the net unsettled positions in an asset group is large, as compared to the available trading volume of that asset group, then there is an increased risk that FICC would face additional market impact cost in liquidating those positions in the event of a Member default. Therefore, the calculation provides FICC with a measurement of the possible increased market impact cost that FICC could face when it liquidates large net unsettled positions in a particular asset group.

To calculate the MLA Charge, FICC categorizes securities into one or more asset groups.[10] At GSD, those asset groups currently include the following, each of which have similar risk profiles: (a) U.S. Treasury securities, which are further categorized by maturity—those maturing in (i) less than one year, (ii) equal to or more than one year and less than two years, (iii) equal to or more than two years and less than five years, (iv) equal to or more than five years and less than ten years, and (v) equal to or more than ten years; (b) Treasury-Inflation Protected Securities (''TIPS''), which are further categorized by maturity—those maturing in (i) less than two years, (ii) equal to or more than two years and less than six years, (iii) equal to or more than six years and less than eleven years, and (iv) equal to or more than eleven years; (c) U.S. agency bonds; and (d) mortgage pools transactions. At MBSD, there is currently one mortgage-backed securities asset group.

FICC first calculates a measurement of market impact cost with respect to the net unsettled positions of a Member in each of these asset groups. To determine the market impact cost for net unsettled positions in Treasuries maturing less than one year and TIPS at GSD, FICC uses the directional market impact cost, which is a function of the net unsettled positions' net directional market value.[11] To determine the market impact cost for all other net unsettled positions at GSD and MBSD, FICC adds together two components: (1) the directional market impact cost, as described above, and (2) the basis cost, which is based on the net unsettled positions' gross market value.[12]

The calculation of market impact cost for net unsettled positions in Treasuries maturing less than one year and TIPS does not include basis cost because basis risk is negligible for these types of positions. For all asset groups, when determining the market impact cost at GSD and MBSD, the net directional market value and the gross market value of the net unsettled positions are divided by the average daily volumes of the securities in that asset group over a lookback period.[13]

FICC then compares the calculated market impact cost to a portion of the VaR Charge that is allocated to net unsettled positions in those asset groups.[14] If the ratio of the calculated market impact cost to a portion of the VaR Charge is greater than a prescribed threshold, an MLA Charge is applied to that asset group.[15] If the ratio of these two amounts is equal to or less than this threshold, an MLA Charge is not applied to that asset group. The threshold is based on an estimate of the market impact cost that is incorporated into the calculation of the 1-day VaR Charge, such that an MLA Charge is applied only when the calculated market impact cost exceeds this prescribed threshold. In addition, FICC may apply a downward adjusting scaling factor in the calculation of the MLA Charge based on the ratio of the calculated market impact cost to the 1-day VaR Charge.

For each Member portfolio, FICC adds the MLA Charges for each asset group, as applicable, to determine a total MLA Charge for the Member portfolio. The final MLA charge is calculated daily and, when the charge is applicable, as described above, is included as a component of Members' Required Fund Deposits.

MLA Excess Amount for Sponsored Members

At GSD, the calculation of the MLA Charge for a Sponsored Member that clears through a single account sponsored by a single Sponsoring Member is the same as described above. For a Sponsored Member that clears through multiple accounts sponsored by multiple Sponsoring Members, in addition to calculating an MLA Charge for each account as described above, FICC also calculates an MLA Charge for the combined net unsettled positions of the Sponsored Member across all of its Sponsoring Members (herein referred to as the ''consolidated portfolio'').

Currently, if the MLA Charge of the consolidated portfolio is higher than the sum of all MLA Charges for each account of the Sponsored Member, the amount of such difference, referred to as the ''MLA Excess Amount,'' would be charged in addition to the applicable MLA Charge. If the MLA Charge of the consolidated portfolio is not higher than the sum of all MLA Charges for each account of the Sponsored Member, then only an MLA Charge for each of the Sponsored Member's accounts, as applicable, would be charged.

The MLA Excess Amount is designed to capture the additional market impact cost that could be incurred when a Sponsored Member defaults, and each of its Sponsoring Members, in its capacity as the Sponsored Member's guarantor, liquidates net unsettled positions associated with that defaulted Sponsored Member. If large net unsettled positions in the same asset group are being liquidated by multiple Sponsoring Members, the market impact cost to liquidate those positions could increase. The MLA Excess Amount addresses this additional market impact cost by capturing any difference between the calculations of the MLA Charge for each of the Sponsored Member's accounts and for the consolidated portfolio. The MLA Excess Amount for a Sponsored Member is currently allocated across each of its

---

[9] FICC determines average daily trading volume by reviewing data that is made publicly available by the Securities Industry and Financial Markets Association (''SIFMA''), *at https://www.sifma.org/resources/archive/research/statistics.*

[10] *See* the definition of Margin Liquidity Adjustment Charge in GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions). *Supra* note 3.

[11] The net directional market value of an asset group within a portfolio is calculated as the absolute difference between the market value of the long net unsettled positions in that asset group, and the market value of the short net unsettled positions in that asset group. For example, if the market value of the long net unsettled positions is $100,000, and the market value of the short net unsettled positions is $150,000, the net directional market value of the asset group is $50,000.

[12] To determine the gross market value of the net unsettled positions in each asset group, FICC sums the absolute value of each CUISP in the asset group.

[13] *Supra* note 9.

[14] FICC's margining methodology uses a three-day assumed period of risk. For purposes of this calculation, FICC uses a portion of the VaR Charge that is based on a one-day assumed period of risk and calculated by applying a simple square-root of time scaling, referred to herein as ''1-day VaR Charge.'' Any changes that FICC deems appropriate to this assumed period of risk would be subject to FICC's model risk management governance procedures set forth in the Clearing Agency Model Risk Management Framework (''Model Risk Management Framework''). *See* Securities Exchange Act Release Nos. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (SR–FICC–2017–014); 84458 (Oct. 19, 2018), 83 FR 53925 (Oct. 25, 2018) (SR–FICC–2018–010); 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (SR–FICC–2020–004); 92380 (July 13, 2021), 86 FR 38140 (July 19, 2021) (SR–FICC–2021–006); 94271 (Feb. 17, 2022), 87 FR 10411 (Feb. 24, 2022) (SR–FICC–2022–001); and 97890 (July 13, 2023), 88 FR 46287 (July 19, 2023) (SR–FICC–2023–008).

[15] FICC reviews the method for calculating the thresholds from time to time and any changes that FICC deems appropriate would be subject to FICC's model risk management governance procedures set forth in the Model Risk Management Framework. *See id.*

Sponsoring Members using a market volatility risk-weighted allocation methodology.

FICC is proposing to revise how GSD calculates the MLA Charge for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members in order to better align with the market impact cost arising from position concentration of the Sponsored Member's respective Sponsored Member accounts. As proposed, those Sponsored Member's accounts with higher relative market impact cost and a lower relative VaR Charge would be apportioned a higher amount of the additional market impact cost than those Sponsored Member's accounts with lower relative market impact cost and a higher relative VaR Charge.

In light of the proposal to enhance GSD's calculation of the MLA Charge for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members, FICC has determined it is appropriate to eliminate the MLA Excess Amount from the GSD Rules. This is because the market impact cost that the MLA Excess Amount is designed to address would now be mitigated by the proposed enhancement to the MLA Charge.

Asset Groups/Subgroups Used in the MLA Charge Calculation

As described above, to calculate the MLA Charge, FICC categorizes securities into one or more asset groups. Those asset groups, as currently codified in the GSD Rules,[16] include the following, each of which have similar risk profiles: (a) U.S. Treasury securities, which are further categorized by maturity—those maturing in (i) less than one year, (ii) equal to or more than one year and less than two years, (iii) equal to or more than two years and less than five years, (iv) equal to or more than five years and less than ten years, and (v) equal to or more than ten years; (b) Treasury-Inflation Protected Securities (''TIPS''), which are further categorized by maturity—those maturing in (i) less than two years, (ii) equal to or more than two years and less than six years, (iii) equal to or more than six years and less than eleven years, and (iv) equal to or more than eleven years; (c) U.S. agency bonds; and (d) mortgage pools transactions. There is one mortgage-backed securities asset group as currently codified in the MBSD Rules.[17]

FICC is proposing to revise the language in the GSD Rules and MBSD Rules describing the asset groups and/or subgroups used in its calculation of the MLA Charge at GSD and MBSD. This proposed change would enable FICC to calculate the MLA Charge at GSD and MBSD using an applicable schedule of asset groupings that FICC would set and adjust from time to time, rather than as codified in the GSD Rules and MBSD Rules in the manner they are today.

Clarifying and Technical Changes

Finally, FICC is proposing to modify certain language in the GSD Rules and MBSD Rules to make it clearer as to how the MLA Charge is calculated at GSD and MBSD, as well as make technical changes in the GSD Rules.

Specifically, FICC is proposing changes that would make it clearer that, for the purpose of determining the amount of MLA Charge at GSD and MBSD, the MLA Charge is first calculated for each asset group/subgroup and then added together to result in one MLA Charge for each Member portfolio. FICC is also proposing changes that would reflect the calculation of market impact cost is performed for combined net unsettled positions in each asset group/subgroup, not for each net unsettled position. Similarly, FICC is proposing changes to make it clearer that the associated VaR Charge allocation is also performed for each asset group/subgroup, not for each net unsettled position.

FICC is also proposing technical changes to reflect correct term usage in the GSD Rules.

(iii) Proposed Changes

Enhancing the MLA Charge Calculation at GSD for Sponsored Members that Clear Through Multiple Accounts Sponsored by Multiple Sponsoring Members

For a Sponsored Member that clears through multiple accounts sponsored by multiple Sponsoring Members, in lieu of charging an MLA Excess Amount in addition to the applicable MLA Charge, FICC is proposing to enhance GSD's calculation of the MLA Charge for such Sponsored Member in order to better align with the additional market impact cost that could be incurred when the Sponsored Member defaults, and each of its Sponsoring Members, in its capacity as the Sponsored Member's guarantor, liquidates the defaulted Sponsored Member's large net unsettled positions in the same asset group.

Specifically, FICC is proposing that when a Sponsored Member clears through multiple accounts sponsored by multiple Sponsoring Members, for each such account, GSD would calculate an MLA Charge both (1) for each asset group/subgroup in the account on a standalone basis, as described above, and (2) for each asset group/subgroup in the account as part of a consolidated portfolio, as described below, with the higher amount applied as the MLA Charge for the relevant asset group/subgroup.

When calculating the MLA Charge for each asset group/subgroup in the account as part of a consolidated portfolio, GSD would first calculate the market impact cost for each asset group/subgroup based on the aggregate net unsettled positions of that asset group/subgroup in the consolidated portfolio. The calculated market impact cost for each asset group/subgroup would then be allocated to each asset group/subgroup in each account of the Sponsored Member on a pro rata basis based on the market impact cost of that asset group/subgroup in the account.

The allocated market impact cost for an asset group/subgroup would then be compared to a portion of the VaR Charge that is allocated to that asset group/subgroup in the account. If the ratio of the allocated market impact cost to a portion of the VaR Charge is greater than a prescribed threshold, as determined by FICC from time to time, there would be an MLA Charge for that asset group/subgroup. If the ratio of the two amounts is equal to or less than this threshold, then there would not be an MLA Charge for that asset group/subgroup. As described above and in further detail in Exhibit 3b to this filing (DTCC Model Development Documentation—FICC Market Liquidity Adjustment Model and Bid-ask Charge Model) (''MLA Model Document''),[18] the threshold is currently determined by an optimization process based on the ratio of an estimate of the market impact cost to the 1-day VaR Charge and would remain so with respect to the changes made in accordance with this proposal.[19]

When applicable, the MLA Charge for each asset group/subgroup in the account as part of the consolidated portfolio would be calculated as a proportion of the product of (1) the amount by which the ratio of the allocated market impact cost for the asset group/subgroup to the portion of the VaR Charge allocated to that asset group/subgroup exceeds the prescribed

[16] *See* the definition of Margin Liquidity Adjustment Charge in GSD Rule 1 (Definitions). *Supra* note 3.

[17] *See* the definition of Margin Liquidity Adjustment Charge in MBSD Rule 1 (Definitions). *Supra* note 3.

[18] FICC is requesting confidential treatment of the MLA Model Document and has filed it separately with the Commission.

[19] *Supra* note 15.

threshold, and (2) a portion of the VaR Charge allocated to that asset group/subgroup.

As stated above, GSD would then compare the MLA Charge for each asset group/subgroup in the account on a standalone basis against the MLA Charge for each asset group/subgroup in the account as part of a consolidated portfolio. The higher of the two amounts would be applied as the MLA Charge for the asset group. The applicable MLA Charges for each asset group/subgroup would be added together to result in one total MLA Charge for that account of the Sponsored Member.

To implement the proposal as described above, FICC would amend GSD Rule 1 (Definitions) to modify the description of the MLA Charge. FICC would also amend GSD Rule 1 to remove MLA Excess Amount as it would no longer be needed under the proposal.

Revise Asset Groups/Subgroups Language in the GSD Rules and MBSD Rules

When calculating the MLA Charge at GSD and MBSD, it is important to have Members' net unsettled positions with similar risk profiles placed in the same group or category so that market impact cost to each asset group or category can be properly measured. However, the risk profiles of positions may shift from time to time due to changes in market conditions, and such shift in risk profiles may require FICC to set and adjust the asset groupings from time to time in order to reflect these changes. Because the various groupings used in the calculation of the MLA Charge are currently codified in the GSD Rules and MBSD Rules, any changes to the groupings would require the filing of a proposed rule change with the Commission.

In order to provide FICC with more flexibility in setting and adjusting the groupings from time to time,[20] FICC is proposing to remove from the GSD Rules references to specific maturity groupings used in FICC's calculation of the MLA Charge. In addition, in order to better reflect the different risk profiles of the mortgage pools/mortgage-backed securities asset groups, FICC is proposing to add language in the GSD Rules and MBSD Rules that would provide mortgage pools/mortgage-backed securities asset groups may be further categorized into subgroups by mortgage pool types. In place thereof, FICC would publish on its website schedules of asset groups and subgroups used in the calculation of the MLA Charge for GSD and MBSD, respectively.

Specifically, FICC is proposing to revise the MLA Charge definition in GSD Rule 1 (Definitions) to provide that for the purpose of calculating the MLA Charge at GSD, a Member's net unsettled positions shall be categorized into (a) U.S. Treasury securities, which shall be further categorized into subgroups by maturity; (b) Treasury-Inflation Protected Securities (''TIPS''), which shall be further categorized into subgroups by maturity; (c) U.S. agency bonds; and (d) mortgage pools, which may be further categorized into subgroups by mortgage pool types.

FICC is also proposing to revise the MLA Charge definition in MBSD Rule 1 (Definitions) to provide that for the purpose of calculating the MLA Charge at MBSD, a Member's net unsettled positions in TBA transactions, Specified Pool Trades and Stipulated Trades shall be included in one mortgage-backed securities asset group, which may be further categorized into subgroups by mortgage pool types.

In addition, in both GSD Rule 1 and MBSD Rule 1, FICC is proposing to revise the MLA Charge definition to state (i) the asset groups and subgroups shall be set forth in a schedule that is published on FICC's website, (ii) it shall be the Member's responsibility to retrieve the schedule, and (iii) FICC would provide Members with at a minimum 5 Business Days' advance notice of any change to the schedule via an Important Notice.

Clarifying and Technical Changes

FICC is proposing to modify certain language in the GSD Rules and MBSD Rules to make it clearer as to how the MLA Charge is calculated at GSD and MBSD. Specifically, FICC is proposing changes to the definition of ''Margin Liquidity Adjustment Charge'' in GSD Rule 1 (Definitions) and MBSD Rule 1 (Definitions) that would make it clearer that, for the purpose of determining the amount of MLA Charge at GSD and MBSD, the MLA Charge is first calculated for each asset group/subgroup and then added together to result in one MLA Charge for each Member portfolio. FICC is also proposing changes that would reflect the calculation of market impact cost is performed for combined net unsettled positions in each asset group/subgroup, not for each net unsettled position. Similarly, FICC is proposing changes to make it clearer that the associated VaR Charge allocation is also performed for each asset group/subgroup, not for each net unsettled position.

In addition, FICC is proposing technical changes to reflect correct term usage in the GSD Rules. Specifically, FICC is proposing to modify the definition of Margin Liquidity Adjustment Charge in GSD Rule 1 (Definitions) by (i) deleting the reference to ''mortgage pools transactions'' and replacing it with ''mortgage pools'' and (ii) deleting ''MLA charge'' and replacing it with ''MLA Charge'' in two places.

Impact Study

FICC conducted an impact study for the period from October 19, 2020 through October 31, 2022 (''Impact Study''). The results of the Impact Study indicate that, if the proposed enhancements to the MLA Charge calculation had been in place for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members, the enhancements would have resulted in an average daily change of $9.47 million in the aggregate MLA Charge for the impacted Sponsored Members (approximately 1.18% of the impacted Sponsored Members' average daily aggregate VaR Charge and 0.20% of the Sponsoring Members' average daily aggregate VaR Charge). The largest daily increase in the aggregate MLA Charge for the impacted Sponsored Members would be $31.44 million (approximately 2.86% of the impacted Sponsored Members' aggregate VaR Charge and 0.57% of the Sponsoring Members' aggregate VaR Charge).

Implementation Timeframe

Subject to approval by the Commission, FICC expects to implement this proposal by no later than 60 Business Days after such approval and would announce the effective date of the proposed changes by an Important Notice posted to FICC's website.

2. Statutory Basis

FICC believes the proposed changes are consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act,[21] and Rules 17Ad–22(e)(6)(i) and (e)(19), each promulgated under the Act,[22] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a

[20] FICC reviews the asset groupings from time to time and any changes that FICC deems appropriate would be subject to FICC's model risk management governance procedures set forth in the Model Risk Management Framework. *See supra* note 14.

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(e)(6)(i) and (e)(19).

clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[23] FICC believes that the proposed changes described are designed to promote the prompt and accurate clearance and settlement of securities transactions, and assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with section 17A(b)(3)(F) of the Act.[24]

As described above, the proposed changes to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members are designed to enable FICC to better align the MLA Charge with the risks arising from position concentration of such Sponsored Members. Better aligning the MLA Charge with such risk would help ensure that FICC collects MLA Charges from the Sponsoring Members of these Sponsored Members that are commensurate with the additional market impact cost that could be incurred when such a Sponsored Member defaults, and each of its Sponsoring Members, in its capacity as the Sponsored Member's guarantor, liquidates the defaulted Sponsored Member's large net unsettled positions in the same asset grouping so that FICC's operations would not be disrupted, and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would assure the safeguarding of securities and funds which are in the custody and control of FICC or for which it is responsible, consistent with section 17A(b)(3)(F) of the Act.[25]

FICC believes the proposed changes to revise the asset group/subgroup language in the Rules would provide FICC with more flexibility in setting and adjusting the asset groupings used in the calculation of the MLA Charge at GSD and MBSD because such adjustments would no longer require a rule change.[26] By being able to make adjustments to the asset groupings from time to time without a rule change, FICC would have the flexibility to respond to changes in the risk profile of Members' positions more promptly. FICC believes that having this additional flexibility to respond to changing risk profiles of Members' positions more promptly would help better ensure that FICC collects MLA Charges from Members that are commensurate with the risk exposure that FICC may face in liquidating Members' portfolios such that, in the event of a Member default, FICC's operations would not be disrupted, and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change to revise the asset group/subgroup language in the Rules would assure the safeguarding of securities and funds which are in the custody and control of FICC or for which it is responsible, consistent with section 17A(b)(3)(F) of the Act.[27]

In addition, FICC believes the proposed clarifying and technical changes would help to ensure that the GSD Rules and MBSD Rules are clear to Members. When Members better understand their rights and obligations regarding the GSD Rules and MBSD Rules, Members are more likely to act in accordance with the GSD Rules and MBSD Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, FICC believes that the proposed clarifying and technical changes would be consistent with section 17A(b)(3)(F) of the Act.[28]

Rule 17Ad–22(e)(6)(i) under the Act [29] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. FICC believes that the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(6)(i).[30]

Specifically, the proposed changes to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members are designed to enable FICC to better align the MLA Charge with the risks arising from position concentration of such Sponsored Members. Better aligning the MLA Charge with such risk would enable FICC to better risk manage its credit exposure to its Members because FICC would then be able to collect MLA Charges from the Sponsoring Members of these Sponsored Members that are commensurate with the additional market impact cost that could be incurred when such a Sponsored Member defaults, and each of its Sponsoring Members, in its capacity as the Sponsored Member's guarantor, liquidates the defaulted Sponsored Member's large net unsettled positions in the same asset grouping. Being able to better align the MLA Charge with the risks arising from position concentration of Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would allow FICC to continue to produce margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market. Therefore, FICC believes these proposed changes are consistent with Rule 17Ad–22(e)(6)(i) under the Act.[31]

FICC believes the proposed change to revise the asset group/subgroup language in the Rules would provide FICC with more flexibility in setting and adjusting the asset groupings used in the calculation of the MLA Charge at GSD and MBSD because such adjustments would no longer require a rule change. By being able to make adjustments to the asset groupings from time to time without a rule change, FICC would have the flexibility to respond to changes in the risk profile of Members' positions more promptly. FICC believes that having this additional flexibility to respond to changing risk profiles of Members' positions more promptly would help better ensure that FICC collects MLA Charges from Members that are commensurate with the risk exposure that FICC may face in liquidating Members' portfolios. In this way, the proposed rule change to revise the asset group/subgroup language in the Rules would allow FICC to continue to produce margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market. Therefore, FICC believes this proposed change is consistent with Rule 17Ad–22(e)(6)(i) under the Act.[32]

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] *Id.*

[25] *Id.*

[26] Pursuant to section 806(e)(1) of title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Rule 19b–4(n)(1)(i) under the Act, if a change materially affects the nature or level of risks presented by FICC, then FICC is required to file an advance notice filing. 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i).

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] *Id.*

[29] 17 CFR 240.17Ad–22(e)(6)(i).

[30] *Id.*

[31] *Id.*

[32] *Id.*

Rule 17Ad–22(e)(19) under the Act [33] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by the direct participants to access the covered clearing agency's payment, clearing, or settlement facilities. FICC believes that the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(19).[34]

Specifically, the proposed changes to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members are designed to enable FICC to better align the MLA Charge with the risks arising from position concentration of such Sponsored Members. Better aligning the MLA Charge with such risk would enable FICC to better risk manage the material risks arising from position concentration of Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members because FICC would then be able to collect MLA Charges from the Sponsoring Members of these Sponsored Members that are commensurate with the additional market impact cost that could be incurred when such a Sponsored Member defaults, and each of its Sponsoring Members, in its capacity as the Sponsored Member's guarantor, liquidates the defaulted Sponsored Member's large net unsettled positions in the same asset grouping. Therefore, FICC believes these proposed changes are consistent with Rule 17Ad–22(e)(19) under the Act.[35]

(B) Clearing Agency's Statement on Burden on Competition

FICC believes proposed changes to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members may have an impact on competition because these changes could result in the Sponsoring Members of such Sponsored Members being assessed a higher margin than they would have been assessed under the current MLA Charge calculation. When these proposed changes result in a higher MLA Charge, they could burden competition for Sponsoring Members that have lower operating margins or higher costs of capital compared to other Sponsoring Members. Whether such burden on competition would be significant would depend on each Sponsoring Member's financial status and the specific risks presented by the portfolio(s) of the Sponsoring Member's Sponsored Members.

FICC believes any burden on competition imposed by the proposed changes to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would not be significant. As the result of the Impact Study indicates, if the enhanced MLA Charge calculation had been in place, the associated aggregate MLA Charge daily change would be approximately $9.47 million (or 1.18% of the impacted Sponsored Members' average daily aggregate VaR Charge and 0.20% of the Sponsoring Members' average daily aggregate VaR Charge) on average. However, regardless of whether the burden on competition would be significant, FICC believes that any burden on competition imposed by the proposed changes to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would be both necessary and appropriate in furtherance of FICC's efforts to mitigate risks and meet the requirements of the Act,[36] as described in this filing and further below.

FICC believes any burden on competition imposed by the proposed changes to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would be necessary in furtherance of the Act, specifically section 17A(b)(3)(F) of the Act.[37] As described above, the proposed changes would enable FICC to better align the MLA Charge with the risks arising from position concentration of such Sponsored Members. Better aligning the MLA Charge with such risk would help ensure that FICC collects MLA Charges from the Sponsoring Members of these Sponsored Members that are commensurate with the additional market impact cost that could be incurred when such a Sponsored Member defaults, and each of its Sponsoring Members, in its capacity as the Sponsored Member's guarantor, liquidates the defaulted Sponsored Member's large net unsettled positions in the same asset grouping such that FICC's operations would not be disrupted, and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would assure the safeguarding of securities and funds which are in the custody and control of FICC or for which it is responsible, consistent with section 17A(b)(3)(F) of the Act.[38]

In addition, FICC believes the proposed changes to enhance the MLA Charge calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members are necessary to support FICC's compliance with Rules 17Ad–22(e)(6)(i) and (e)(19) under the Act. Specifically, as described above, FICC believes these proposed changes would enable FICC to better align the MLA Charge with the risks arising from position concentration of such Sponsored Members. Being able to better align the MLA Charge with the risks arising from position concentration of Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would allow FICC to continue to produce margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market, consistent with Rule 17Ad–22(e)(6)(i) under the Act.[39] Better aligning the MLA Charge with the risks arising from position concentration of Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would also enable FICC to better risk manage its credit exposure to its Members because FICC would then be able to collect MLA Charges from the Sponsoring Members of these Sponsored Members that are commensurate with the additional market impact cost that could be incurred when such a Sponsored Member defaults, and each of its Sponsoring Members, in its capacity as the Sponsored Member's guarantor, liquidates the defaulted Sponsored Member's large net unsettled positions in the same asset grouping, consistent with Rule 17Ad–22(e)(19) under the Act.[40]

FICC believes that the above-described burden on competition that could be created by the proposed changes to enhance the MLA Charge

[33] 17 CFR 240.17Ad–22(e)(19).

[34] *Id.*

[35] *Id.*

[36] 15 U.S.C. 78q–1(b)(3)(I).

[37] 15 U.S.C. 78q–1(b)(3)(F).

[38] *Id.*

[39] 17 CFR 240.17Ad–22(e)(6)(i).

[40] 17 CFR 240.17Ad–22(e)(19).

calculation at GSD for Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, as described in detail above. These proposed changes would enable FICC to better align the MLA Charge with the risks arising from position concentration of such Sponsored Members. Being able to better align the MLA Charge with the risks arising from position concentration of Sponsored Members that clear through multiple accounts sponsored by multiple Sponsoring Members would allow FICC to continue to produce margin levels commensurate with the risks and particular attributes of each Sponsored Member's portfolio.

FICC believes the proposed changes to revise the asset group/subgroup language in the Rules may have an impact on competition because these changes would enable FICC to adjust the asset groupings used in the calculation of the MLA Charge from time to time, which could result in Members being assessed a higher margin than they would have been assessed under the current asset groupings. When these proposed changes result in a higher MLA Charge, they could burden competition for Members that have lower operating margins or higher costs of capital compared to other Members. Whether such burden on competition would be significant would depend on each Member's financial status and the specific risks presented by each Member's portfolio(s). Regardless of whether the burden on competition would be significant, FICC believes that any burden on competition imposed by the proposed changes to revise the asset group/subgroup language in the Rules would be both necessary and appropriate in furtherance of FICC's efforts to mitigate risks and meet the requirements of the Act,[41] as described in this filing and further below.

FICC believes that any such burden on competition imposed by the proposed changes to revise the asset group/subgroup language in the Rules would be necessary in furtherance of the Act, specifically section 17A(b)(3)(F) of the Act.[42] As described above, these proposed changes would provide FICC with more flexibility in setting and adjusting the asset groupings used in the calculation of the MLA Charge at GSD and MBSD because such adjustments would no longer require a rule change. By being able to make adjustments to the asset groupings from time to time without a rule change, FICC would have the flexibility to respond to changes in the risk profile of Members' positions more promptly. FICC believes that having this additional flexibility to respond to changing risk profiles of Members' positions more promptly would help better ensure that FICC collects MLA Charges from Members that are commensurate with the risk exposure that FICC may face in liquidating Members' portfolios such that, in the event of a Member default, FICC's operations would not be disrupted, and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed changes to revise the asset group/subgroup language in the Rules would assure the safeguarding of securities and funds which are in the custody and control of FICC or for which it is responsible, consistent with section 17A(b)(3)(F) of the Act.[43]

In addition, FICC believes the proposed changes to revise the asset group/subgroup language in the Rules are necessary to support FICC's compliance with Rule 17Ad–22(e)(6)(i) under the Act. Specifically, as described above, FICC believes these proposed changes would provide FICC with more flexibility in setting and adjusting the asset groupings used in the calculation of the MLA Charge at GSD and MBSD and help better ensure that FICC collects MLA Charges from Members that are commensurate with the risk exposure that it may face in liquidating Members' portfolios. In this way, the proposed changes to revise the asset group/subgroup language in the Rules would allow FICC to continue to produce margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market. Therefore, FICC believes these proposed changes are consistent with Rule 17Ad–22(e)(6)(i) under the Act.[44]

FICC believes that the above-described burden on competition that could be created by the proposed changes to revise the asset group/subgroup language in the Rules would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, as described in detail above. These proposed changes would help better ensure that FICC collects MLA Charges from Members that are commensurate with the risk exposure that FICC may face in liquidating Members' portfolios. Being able to collect MLA Charges from Members that are commensurate with the risk exposure that FICC may face in liquidating Members' portfolios would allow FICC to continue to produce margin levels commensurate with the risks and particular attributes of each Member's portfolio.

FICC does not believe the proposed clarifying and technical changes to the GSD Rules and MBSD Rules would impact competition. These proposed changes would help to ensure that the GSD Rules and MBSD Rules remain clear. In addition, the changes would facilitate Members' understanding of the GSD Rules and MBSD Rules and their obligations thereunder. These proposed changes would not affect FICC's operations or the rights and obligations of the membership. As such, FICC believes the proposed clarifying and technical changes to the GSD Rules and MBSD Rules would not have any impact on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right not to respond to any comments received.

[41] 15 U.S.C. 78q–1(b)(3)(I).

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] *Id.*

[44] 17 CFR 240.17Ad–22(e)(6)(i).

### III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2023–012 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2023–012. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*dtcc.com/legal/sec-rule-filings*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–FICC–2023–012 and should be submitted on or before September 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–18187 Filed 8–23–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–98165; File No. 4–698]**

## Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail

August 18, 2023.

### I. Introduction

On August 2, 2023, the Operating Committee for Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''):[1] BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (collectively, the ''Participants'' or ''SROs'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 (''Exchange Act''),[2] and Rule 608 thereunder,[3] a proposed amendment to the CAT NMS Plan to modify the current linkage timeline (''Current Linkage Timeline'') for the consolidated audit trail (''CAT''), as contained in Appendix A, attached hereto (''Revised Linkage Timeline''). The Commission is publishing this notice to solicit comments from interested persons on the amendment.[4]

### II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the amendment, along with information required by Rule 608(a)(4) and (5) under the Exchange Act,[5] as prepared and submitted by the Participants to the Commission and reproduced below verbatim.[6]

*A. Description of the Proposed Amendments to the CAT NMS Plan*

1. Current Linkage Timeline

The CAT NMS Plan requires that all CAT Data reported to the Central Repository must be processed and assembled to create the complete lifecycle of each Reportable Event.[7] The Plan Processor uses a daisy chain approach to link and create the order lifecycles. In the daisy chain approach, a series of unique order identifiers, assigned to all order events handled by CAT Reporters, are linked together by the Central Repository and assigned a single CAT-generated CAT Order ID that is associated with each individual order event and used to create the complete lifecycle of an order.[8] Under the Current Linkage Timeline, the CAT provides a final CAT Order ID at T+5 at 8 a.m. ET pursuant to the following timeline:

T+1 @8 a.m.: Initial submissions due
T+1 @12 p.m.: Initial data validation, communication of errors to CAT Reporters; unlinked data available to regulators
T+1 @9 p.m.: Interim CAT Order ID available[9]
T+3 @8 a.m.: Resubmission of corrected data

[45] 17 CFR 200.30–3(a)(12).

[1] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''Order Approving CAT NMS Plan'').

[2] 15 U.S.C 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] 17 CFR 242.608.

[5] *See* 17 CFR 242.608(a)(4) and (a)(5).

[6] *See supra* note 4. Unless otherwise defined herein, capitalized terms used herein are defined as set forth in the CAT NMS Plan.

[7] Section 3 of Appendix D of the CAT NMS Plan at D–7.

[8] Section 3 of Appendix D of the CAT NMS Plan at D–8.

[9] *See supra* nn.5–6.

T+4 @8 a.m.: Final lifecycle assembly begins, reprocessing of late submissions and corrections
T+5 @8 a.m.: Corrected data available to Participant regulatory staff and the SEC

2. Revised Linkage Timeline

With the Revised Linkage Timeline, the Participants propose to clarify that the Plan does not require assignment of interim CAT Order IDs and to provide a final CAT Order ID by T+3 at 8 a.m. ET, as opposed to T+5 at 8 a.m. ET. With this proposal, the linkage timeline would be revised to operate as follows:

T+1 @8 a.m.: Initial submissions due
T+1 @12 p.m.: Initial data validation, communication of errors to CAT Reporters; unlinked data available to regulators
T+2 @8 a.m.: Final lifecycle assembly begins, reprocessing of late submissions and corrections submitted prior to T+2 at 8am
T+3 @8 a.m.: Corrected data available to Participant regulatory staff and the SEC, resubmission of corrected data
*Weekend:* Late submissions and corrections submitted after T+2 at 8 a.m. through T+4 at 8 a.m. would be processed over the weekend using the late-to-lifecycle approach discussed below [10]

3. Effect of Revised Linkage Timeline on CAT Data Processing and Availability

The Revised Linkage Timeline would continue to provide regulators with timely access to CAT Data. The following compares the processing and availability of the CAT Data under the Current Linkage Timeline versus the Revised Linkage Timeline in detail.[11]

a. No Changes to Submission Deadlines for CAT Reporters

The Revised Linkage Timeline will not change the reporting deadlines for CAT Reporters. The deadlines for initial data submissions and for error corrections will remain the same.

The CAT NMS Plan requires CAT Reporters to submit the required CAT Data to the CAT by 8:00 a.m. on T+1. The Revised Linkage Timeline does not change this reporting deadline. For example, Section 6.3(b)(ii) of the CAT NMS Plan states that ''[e]ach Participant shall report Participant Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Participant records such Participant Data.'' Similarly, Section 6.3(b)(ii) of the CAT NMS Plan states that:

> Consistent with Appendix D, Reporting and Linkage Requirements, each Participant shall, through its Compliance Rule, require its Industry Members to report: (A) Recorded Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member records such Recorded Industry Member Data; and (B) Received Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member receives such Received Industry Member Data.

The CAT NMS Plan also requires Participants and Industry Members to submit corrected Participant Data and Industry Member Data, respectively, to the Central Repository by 8:00 a.m. Eastern Time on T+3.[12] The Revised Linkage Timeline also does not change this reporting deadline.

b. Earlier Access to Final CAT Order ID

Under the Revised Linkage Timeline, regulators would have access to the Final CAT Order ID and the finalized data set two full days earlier than under the Current Linkage Timeline. Regulators would have access to the final CAT Order ID on T+3 at 8 a.m., rather than on T+5 at 8 a.m. Unlike the interim CAT Order ID, the final CAT Order ID includes the CCID and FDID enrichments (that is, the order and transaction data has been enriched by the Firm Designated ID [13] and CCIDs [14]).

In connection with the earlier provision of the final CAT Order ID, no interim CAT Order ID would be provided. The interim CAT Order ID currently is available at T+1 at 9 p.m.[15] Accordingly, regulators would have access to the final CAT Order ID 35 hours (or approximately one day and a half) later than they currently receive the interim CAT Order ID but, with the accelerated final CAT Order ID, regulators would have access to the CCID and FDID enrichments as well. As discussed below, the proposed elimination of the interim CAT Order ID would save 100% of the costs related to the creation of the interim CAT Order ID.

c. Reduction in Daily Linkage Processing Volume

The Revised Linkage Timeline would reduce the daily linkage processing job from the processing of four days of data volume to two days of volume. Under the Current Linkage Timeline, in addition to the processing necessary for creating the interim CAT Order ID by T+1 at 9 a.m., the current linkage processing for the final CAT Order ID covers data from four days, that is, data from T+1 at 8 a.m. through T+4 at 8 a.m. With the Revised Linkage Timeline, the linkage processing for the final CAT Order ID covers data from two days, that is, data from T+1 at 8 a.m. through T+2 at 8 a.m. As discussed below, the proposed reduction in daily linkage processing volume would save approximately 40% in computational costs related to linkage in comparison to the existing processes.

d. Efficient Handling of Lates/Repairs

The Revised Linkage Timeline would streamline the processing for feedback to CAT Reporters. CAT Reporters currently receive feedback for any data submission reported prior to 8 a.m. on T+4. With the Revised Linkage Timeline, CAT Reporters would receive feedback for any data submitted prior to T+2 at 8 a.m. Accordingly, under the Revised Linkage Timeline, CAT Reporters would no longer receive feedback on data reported after T+2 at 8 a.m. through T+4 at 8 a.m., as they do under the current processing. Without a linkage error generated, the CAT Reporter would not know they had a linkage error and would attempt no further corrections. The error not generated under this proposal would also not be counted in the compliance error rate. For example, if an Industry Member submits a MEOR on T+2 at noon with an incorrect routed OrderID, the Industry Member would not receive unlinked feedback and the error would not be included in the Industry Member's compliance rate. The record would, however, be included as a late submission in the compliance rate calculation.

Limiting feedback to data submitted prior to T+2 at 8 a.m. would capture 99.75% of all submissions to CAT for a given trade date based on an analysis of data from a recent six-month period by the Plan Processor. The significant cost savings realized by this proposal far outweighs the less than 0.25% of data that would potentially not generate a linkage error, but would otherwise be fully available in CAT and subject to late to the lifecycle processing.

[10] This change would not impact how late submissions and corrections received outside of the current T+5 processing window are addressed.

[11] The Revised Linkage Timeline only addresses the processing timeline for Reportable Events; it does not propose any changes with regard to the Customer and account information in the CAT.

[12] *See* Section 6.1 of Appendix D of the CAT NMS Plan at D–18.

[13] Section 1.1 of the CAT NMS Plan.

[14] The CCID (also referred to as the ''CAT Customer-ID'') means ''with respect to a customer, a code that uniquely and consistently identifies such customer for purposes of providing data to the central repository.''

[15] *See supra* nn.5–6.

The remaining late events received after T+2 at 8 a.m. through T+4 at 8 a.m. would be processed over the weekend using late-to-lifecycle processing, which provides substantial efficiency gains over the current processes. Under this approach, late records may be associated with more than one CAT Order ID. Specifically, a late record that is a missing link between disjoined segments of an order lifecycle and is not associated with a lifecycle in the processing prior to T+3 at 8 a.m. would be associated with *both* lifecycles and will include the date of the correction. This means that the entire lifecycle would be available through the linking of the disjoined segments, each with their own CAT Order ID. The CAT LLC Operating Committee plans to consider a Change Order that would enhance the current late-to-lifecycle process to present data to users in a manner similar to how it would be presented if the data were submitted on time.

4. Cost Savings of the Revised Linkage Timeline

CAT LLC estimates that the Revised Linkage Timeline would result in annual savings of $9.8 million versus the Current Linkage Timeline. The Revised Linkage Timeline addresses two primary cost drivers, each responsible for approximately half of the $9.8 million in savings: (1) the proposed elimination of the interim CAT Order ID would provide 100% of savings versus the status quo of providing the interim CAT Order ID by T+1 at 9 p.m.; and (2) reducing the daily linkage processing job from the processing of four days of volume to two days of volume would provide approximately 40% of savings versus the status quo.[16]

CAT LLC believes that the substantial savings of approximately $9.8 million annually are readily justified given the minimal impact on regulatory access to CAT Data.

5. Proposed Revisions to CAT NMS Plan

a. Clarification: No Interim CAT Order ID Available Prior to T+3 at 8 a.m.

To implement the Revised Linkage Timeline, CAT LLC proposes to amend the CAT NMS Plan to clarify that there is no requirement to provide an interim CAT Order ID.[17] Accordingly, CAT LLC proposes to remove any references to lifecycle linkages in the data processing timeline described in the CAT NMS Plan.[18] Specifically, CAT LLC proposes to delete the phrase ''lifecycle linkages'' from the following bullet in Section 6.1 of Appendix D of the CAT NMS Plan: ''Noon Eastern Time T+1 (transaction date + one day) – Initial data validation, lifecycle linkages and communication of errors to CAT Reporters.'' Similarly, CAT LLC proposes to delete the phrase ''Life Cycle Linkage'' from the second box in Figure A in Section 6.1 of Appendix D of the CAT NMS Plan. The box currently states the following: ''12:00 p.m. ET T+1 Initial Validation, Life Cycle Linkage, Communication of Errors.'' With the change, this box would state ''12:00 p.m. ET T+1 Initial Validation, Communication of Errors.''

b. Commencement of Final Lifecycle Assembly

CAT LLC also proposes to amend the CAT NMS Plan to require CAT LLC to commence final lifecycle assembly by T+2 at 8 a.m. Accordingly, CAT LLC proposes to add the following bullet to the data processing timeline in Section 6.1 of Appendix D of the CAT NMS Plan:

- 8:00 a.m. Eastern Time T+2: (transaction date + two days) – Final lifecycle assembly begins; deadline for late submissions and corrections to be included in final CAT Order ID

Similarly, CAT LLC proposes to add a new third box to Figure A in Section 6.1 of Appendix D of the CAT NMS Plan. The box would state the following: ''Final Lifecycle Assembly Begins; Deadline for Late Submissions and Corrections to be included in Final CAT Order ID.''

c. Final CAT Order ID Available at T+3 at 8 a.m.

CAT LLC also proposes to amend the CAT NMS Plan to require CAT LLC to make the final CAT Order ID available and to make data ready for regulatory by T+3 at 8 a.m. Specifically, CAT LLC proposes to revise the following bullet in the data processing timeline in Section 6.1 of Appendix D of the CAT NMS Plan to indicate that the final lifecycle identifier must be available by T+3 at 8 a.m.: ''8:00 a.m. Eastern Time T+3 (transaction date + three days) – Resubmission of corrected data.'' CAT LLC proposes to add the phrase ''and final CAT Order ID available and data ready for regulators'' to this bullet. Similarly, CAT LLC proposes to add the phrase ''and Final CAT Order ID Available and Data Ready for Regulators'' to the third box in Figure A in Section 6.1 of Appendix D of the CAT NMS Plan. The box currently states the following: ''8:00AM ET T+3 Resubmission of Errors Due.'' With this change, this box would state ''8:00AM ET T+3 Resubmission of Errors Due and Final CAT Order ID Available and Data Ready for Regulators.''

In addition, CAT LLC proposes to amend the CAT NMS Plan to remove the references to making corrected data available to Participant regulatory staff and the SEC by T+5 at 8 a.m. As discussed above, data would be ready for regulators on T+3 at 8 a.m. Specifically, CAT LLC proposes to delete the following bullet from Section 6.1 of Appendix D of the CAT NMS Plan: ''8:00 a.m. Eastern Time T+5 (transaction date + five days) – Corrected data available to Participant regulatory staff and the SEC.'' In addition, CAT LLC proposes to delete the fifth box in Figure A in Section 6.1 of Appendix D of the CAT NMS Plan. This box currently states ''T+5 Data Ready for Regulators.''

In light of the change from a T+5 conclusion in the Current Linkage Timeline to the T+3 conclusion in the Revised Linkage Timeline, CAT LLC proposes to amend Section 6.2 of Appendix D of the CAT NMS Plan to replace the references to ''T+5'' with references to ''T+3'' in the following statements:

- ''Between 12:00 p.m. Eastern Time on T+1 and T+5, access to all iterations of processed data must be available to Participants' regulatory staff and the SEC.''
- ''If any data remains un-linked after T+5, it must be available and included with all linked data with an indication that the data was not linked.''
- ''If corrections are received after T+5, Participants' regulatory staff and the SEC must be notified and informed as to how re-processing will be completed.''

Similarly, for the same reason, CAT LLC proposes to replace the reference to a ''five-day'' process with a reference to a ''three-day'' process in the following sentence in Section 6.2 of Appendix D of the CAT NMS Plan: ''The Plan Processor must provide reports and notifications to Participant regulatory staff and the SEC regularly during the [five-day] *three-day* process, indicating the completeness of the data and errors.''

[16] CAT LLC notes that the estimated savings do not include incremental cost of the larger late-to-lifecycle processing or the build costs associated with the revised processing. CAT LLC does not anticipate that such costs would be significant.

[17] CAT LLC notes that, at the discretion of the Operating Committee, the Plan Processor could be directed to provide an interim CAT Order ID prior to T+3 in the event of a market event.

[18] The Commission interprets the phrase ''lifecycle linkages'' to require the assignment of an interim CAT Order ID. *See* July 2022 Order at 42251 and *supra* nn.5–6.

d. Late to the Lifecycle Processing for Corrections Submitted From T+2 at 8 a.m. through T+4 at 8 a.m.

CAT LLC proposes to amend the CAT NMS Plan to require late submission and corrections submitted to the CAT after T+2 at 8 a.m. through T+4 at 8 a.m. to be processed over the weekend. The weekend processing would rely on the late-to-lifecycle processing, which provides substantial efficiency gains over the current processes. CAT LLC proposes to describe this process by adding the following bullet to Section 6.1 of Appendix D of the CAT NMS Plan:

• Over Weekend—Late submissions and corrections submitted after T+2 at 8:00 a.m. ET through T+4 at 8:00 a.m. ET for order events that occurred within the past 18 months would be processed over the weekend by 5:00 p.m. ET the next business day. Late to the lifecycle processing for data older than 18 months would be processed on a schedule as set forth by the Operating Committee.

Similarly, CAT LLC proposes to add the following description to the Figure A in Section 6.1 of the CAT NMS Plan: ''Late submissions and corrections submitted after T+2 at 8 a.m. ET through T+4 at 8 a.m. ET for order events that occurred within the past 18 months would be processed over the weekend by 5 p.m. ET the next business day. Late to the lifecycle processing for data older than 18 months would be processed on a schedule as set forth by the Operating Committee.''

In addition, CAT LLC proposes to revise the CAT NMS Plan to remove references to the requirement to reprocess error corrections on T+4. Under the Revised Linkage Timeline, as described above, late submissions and corrections submitted prior to T+2 at 8 a.m. would be used to assemble the final CAT Order ID on T+3, and late submissions and corrections submitted after T+2 at 8 a.m. through T+4 at 8 a.m. would be processed over the weekend using the late-to-lifecycle approach. Accordingly, the requirement to reprocess error corrections on T+4 would be no longer be applicable.

*B. Governing or Constituent Documents*

Not applicable.

*C. Implementation of Amendment*

The Participants propose to implement the proposal upon approval of the proposed amendment to the CAT NMS Plan.

*D. Development and Implementation Phases*

Not applicable.

*E. Analysis of Impact on Competition*

CAT LLC does not believe that the proposed amendment would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Indeed, CAT LLC believes that the proposed amendments will have a positive impact on competition, efficiency and capital formation. The proposed amendments will provide substantial savings in CAT costs while providing minimal impact on the regulatory use of CAT Data. Such substantial savings would inure to the benefit of all participants in the markets for NMS Securities and OTC Equity Securities, including Participants, Industry Members, and most importantly, the investors.

*F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan*

Not applicable.

*G. Approval by Plan Sponsors in Accordance With Plan*

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the CAT NMS Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or has otherwise become effective under Rule 608 of Regulation NMS under the Exchange Act. In addition, the proposed amendment was discussed during Operating Committee meetings. The Participants, by a vote of the Operating Committee taken on August 1, 2023, have authorized the filing of this proposed amendment with the SEC in accordance with the Plan.

*H. Description of Operation of Facility Contemplated by the Proposed Amendment*

Not applicable.

*I. Terms and Conditions of Access*

Not applicable.

*J. Method of Determination and Imposition, and Amount of, Fees and Charges*

Not applicable.

*K. Method and Frequency of Processor Evaluation*

Not applicable.

*L. Dispute Resolution*

Not applicable.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendment 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 4–698 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 4–698. 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 submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposed amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the Participants' offices. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number 4–698 and should be submitted on or before September 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Sherry R. Haywood,**

*Assistant Secretary.*

## Appendix A

**Proposed Revisions to CAT NMS Plan**

Additions *italicized;* deletions [bracketed]

* * * * *

6.1 Data Processing

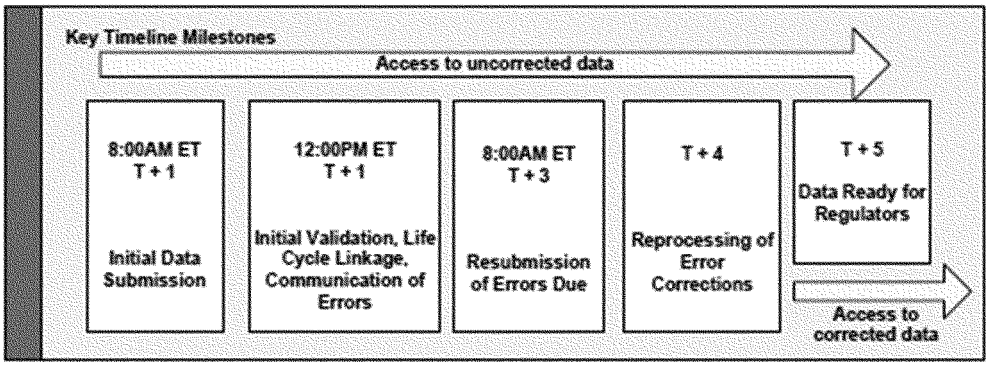
CAT order events must be processed within established timeframes to ensure data can be made available to Participants' regulatory staff and the SEC in a timely manner. The processing timelines start on the day the order event is received by the Central Repository for processing. Most events must be reported to the CAT by 8:00 a.m. Eastern Time the Trading Day after the order event occurred (referred to as transaction date). The processing timeframes below are presented in this context. All events submitted after T+1 (either reported late or submitted later because not all of the information was available) must be processed within these timeframes based on the date they were received.

The Participants require the following timeframes (Figure A) for the identification, communication and correction of errors from the time an order event is received by the processor:

- Noon Eastern Time T+1 (transaction date + one day) − Initial data validation[, lifecycle linkages] and communication of errors to CAT Reporters;
- *8:00 a.m. Eastern Time T+2: (transaction date + two days) − Final lifecycle assembly begins; deadline for late submissions and corrections to be included in final CAT Order ID*
- 8:00 a.m. Eastern Time T+3 (transaction date + three days) − Resubmission of corrected data; *and final CAT Order ID available and data ready for regulators;* and
- [8:00 a.m. Eastern Time T+5 (transaction date + five days) − Corrected data available to Participant regulatory staff and the SEC.]
- *Over Weekend—Late submissions and corrections submitted after T+2 at 8:00 a.m. ET through T+4 at 8:00 a.m. ET for order events that occurred within the past 18 months would be processed over the weekend by 5:00 p.m. ET the next business day. Late to the lifecycle processing for data older than 18 months would be processed on a schedule as set forth by the Operating Committee.*

Late submissions or re-submissions (after 8:00 a.m.) may be considered to be processed that day if it falls within a given time period after the cutoff. This threshold will be determined by the Plan Processor and approved by the Operating Committee. In the event that a significant portion of the data has not been received as monitored by the Plan Processor, the Plan Processor may decide to halt processing pending submission of that data.

## Figure A: CAT Central Repository Data Processing Timelines




{changes to second box in chart: 12:00 p.m. ET T+1 Initial Validation, [Life Cycle Linkage,] Communication of Errors}

{insert new third box: 8:00AM ET T+2 *Final Lifecycle Assembly Begins; Deadline for Late Submissions and Corrections to be included in Final CAT Order ID*}

{changes to third box in chart: 8:00AM ET T+3 Resubmission of Errors Due *and Final CAT Order ID Available and Data Ready for Regulators*}

{Delete fourth box in chart: [T+4 Reprocessing of Error Corrections]}

{Delete fifth box in chart: [T+5 Data Ready for Regulators]}

*Late submissions and corrections submitted after T+2 at 8:00AM ET through T+4 at 8:00AM ET for order events that occurred within the past 18 months would be processed over the weekend by 5:00PM ET the next business day. Late to the lifecycle processing for data older than 18 months would be processed on a schedule as set forth by the Operating Committee.*

6.2 Data Availability Requirements

Prior to 12:00 p.m. Eastern Time on T+1, raw unprocessed data that has been ingested by the Plan Processor must be available to Participants' regulatory staff and the SEC.

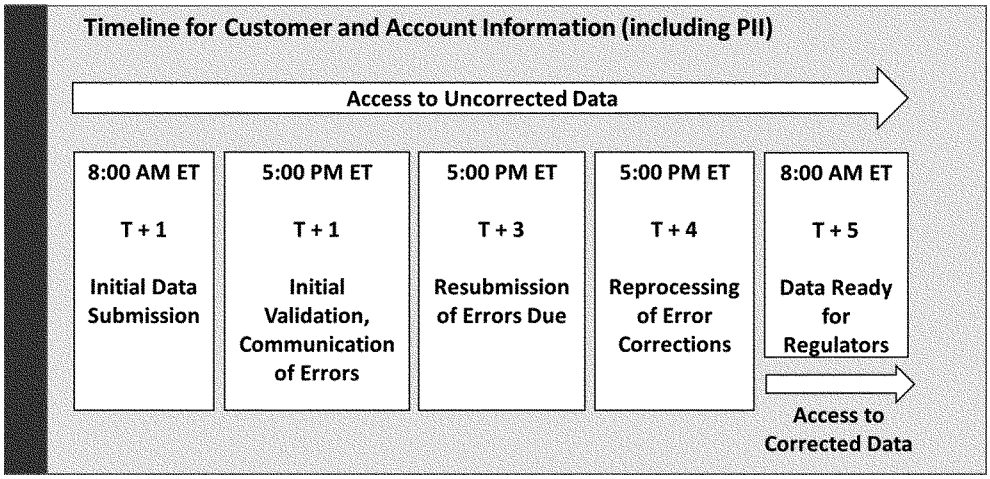
Between 12:00 p.m. Eastern Time on T+1 and [T+5] *T+3,* access to all iterations of processed data must be available to Participants' regulatory staff and the SEC.

The Plan Processor must provide reports and notifications to Participant regulatory staff and the SEC regularly during the [five-day] *three-day* process, indicating the completeness of the data and errors. Notice of major errors or missing data must be reported as early in the process as possible. If any data remains un-linked after [T+5] *T+3,* it must be available and included with all linked data with an indication that the data was not linked.

If corrections are received after [T+5] *T+3,* Participants' regulatory staff and the SEC must be notified and informed as to how re-processing will be completed. The Operating Committee will be involved with decisions on how to re-process the data; however, this does not relieve the Plan Processor of notifying the Participants' regulatory staff and the SEC.

[19] 17 CFR 200.30–3(a)(85).

**Figure B: Customer and Account Information (Including PII)**




CAT PII data must be processed within established timeframes to ensure data can be made available to Participants' regulatory staff and the SEC in a timely manner. Industry Members submitting new or modified Customer information must provide it to the Central Repository no later than 8:00 a.m. Eastern Time on T+1. The Central Repository must validate the data and generate error reports no later than 5:00 p.m. Eastern Time on T+1. The Central Repository must process the resubmitted data no later than 5:00 p.m. Eastern Time on T+4. Corrected data must be resubmitted no later than 5:00 p.m. Eastern Time on T+3. The Central Repository must process the resubmitted data no later than 5:00 p.m. Eastern Time on T+4. Corrected data must be available to regulators no later than 8:00 a.m. Eastern Time on T+5.

Customer information that includes PII data must be available to regulators immediately upon receipt of initial data and corrected data, pursuant to security policies for retrieving PII.

* * * * *

[FR Doc. 2023–18188 Filed 8–23–23; 8:45 am]

BILLING CODE 8011–01–P

## DEPARTMENT OF STATE

**[Public Notice: 12145]**

### Notice of Department of State Sanctions Actions

**SUMMARY:** The Department of State is publishing the names of one or more persons that have been placed on the Department of Treasury's List of Specially Designated Nationals and Blocked Persons (SDN List) administered by the Office of Foreign Assets Control (OFAC) based on the Department of State's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

**FOR FURTHER INFORMATION CONTACT:** Jim Mullinax, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647 7677, email: *MullinaxJD@state.gov.*

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

The SDN List and additional information concerning sanctions programs are available on OFAC's website, *https://ofac.treasury.gov/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions.*

### Notice of Department of State Actions

On April 12, 2023, the Department of State determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4710–AE–P

**Individuals**

1. BASHKIROV, ALEKSEI VLADIMIROVICH (Cyrillic: БАШКИРОВ, Алексей Владимирович) (a.k.a. BASHKIROV, Alexey Vladimirovich), Christou Keli, 10A Residence Blanco, Flat 103, Neapoli, Limassol 3101, Cyprus; 26 Zoologicheskaya, Building 1, Apartment 25, Moscow 123056, Russia; DOB 15 Apr 1977; POB Moscow, Russia; nationality Russia; citizen Russia; Gender Male; Passport 530691501 (Russia); Tax ID No. 770300386581 (Russia) (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O. 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," (E.O. 14024) for operating or having operated in the metals and mining sector of the Russian Federation economy.

2. GRIGORIEV, GRIGORIY IGOREVICH (Cyrillic: ГРИГОРЬЕВ, Григорий Игоревич) (a.k.a. GRIGOREV, Girgorij Igorevich), Urovskaya, Building 95, Flat 7, Moscow 125466, Russia; DOB 19 Jun 0177; POB Istra, Russia; nationality Russia; Gender Male; Passport 721493424 (Russia); Tax ID No. 721493424 (Russia) (individual) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY NOVELCO).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of

Limited Liability Company Novelco, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

3. VASSILIADES, CHRISTODOULOS GEORGIOU (Greek: ΒΑΣΙΛΕΙΑΔΗΣ, Χριστοδουλοσ Γεωργίου) (a.k.a. VASILEIADIS, Hristodoylos G.; a.k.a. VASILIADIS, Christodoulos G.; a.k.a. VASSILIADES, Christodoulos G.), 10 Doiranis Engomi, Nicosia, Cyprus; 20 Vassilissis Freiderikis El Greco House, 1st Floor, Apt. 104, Nicosia, Cyprus; 35 Grosvenor Street, 1st Floor Offices, London W1K 4QX, United Kingdom; DOB 31 Mar 1957; POB Limassol, Cyprus; nationality Cyprus; Gender Male; Passport K00162155 (Cyprus); alt. Passport K00463863 (Cyprus); National ID No. 00529498S (Cyprus); alt. National ID No. 529498 (Cyprus); alt. National ID No. 150000890001 (United Kingdom) (individual) [RUSSIA-EO14024].

Designated pursuant to Section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

Designated pursuant to Section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Sberbank Investments Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

4. KAMPERI, KYRIAKI DEMETRIOU (Greek: ΚΑΜΠΕΡΗ, Κυριακη Δημητριου) (a.k.a. KAMPERI, Koulla Demetriou; a.k.a. KAMPERI, Kyriakou Demetriou), 35 Grosvenor Street, 1st Floor Offices, London W1K 4QX, United Kingdom;

Ledra Business Centre, 1 Poseidonos Street, Egkomi Nicosias 2406, Cyprus; Ledra House, 15 Agiou Pavlou, Nicosia 1105, Cyprus; DOB 01 Jan 1971 to 31 Jan 1971; nationality Cyprus; Gender Female (individual) [RUSSIA-EO14024].

Designated pursuant to Section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

Designated pursuant to Section 1(a)(iii)(C) of E.O. 14024 for being or having been, a leader, official, senior executive officer, or member of the board of directors of Sberbank Investments Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

5. VASSILIADES, ANNA MARIA (Greek: ΒΑΣΙΛΕΙΑΔΗ, Ἄννα Μαρια) (a.k.a. VASILEIADI, Anna Maria; a.k.a. VASSILIADES, Maria Anna; a.k.a. VASSILIADOU, Anna Maria), 35 Grosvenor Street, 1st Floor Offices, London W1K 4QX, United Kingdom; The Navarino Penthouse, 18 Navarinou, Nicosia 1100, Cyprus; Apartment 501, Marconi House, 335 The Strand, Aldwych, London WC2B 5EN, United Kingdom; 18 Navarino Street, 5th Floor, Ayios Andreas, Nicosia 1100, Cyprus; DOB 26 Apr 1987; POB Nicosia, Cyprus; nationality Cyprus; Gender Female; Passport K00415052 (Cyprus); National ID No. 1090912 (Cyprus) (individual) [RUSSIA-EO14024] (Linked To: VASSILIADES & CO UK LIMITED).

Designated pursuant to Section 1(a)(iii)(C) of E.O. 14024 for being or having been, a leader, official, senior executive officer, or member of the board of

directors of Vassiliades & Co (UK) Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

6. DITRIKH, YEVGENIY IVANOVICH (Cyrillic: ДИТРИХ, Евгений Иванович) (a.k.a. DITRIH, Evgenii Ivanovich; a.k.a. DITRIKH, Evgeni Ivanovich); DOB 08 Sep 1973; POB Mytishchi, Moscow Region, Russia; nationality Russia; citizen Russia; Gender Male; Tax ID No. 772435431803 (Russia) (individual) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

Designated pursuant to Section 1(a)(iii)(C) of E.O. 14024 for being or having been, a leader, official, senior executive officer, or member of the board of directors of JSC GTLK, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

7. VASSILIADES, GIORGOS (Greek: ΒΑΣΙΛΕΙΑΔΗΣ, Γιωργοσ) (a.k.a. VASILEIADIS, Giorgos; a.k.a. VASILIADIS, Giorgos), Flat 28, Aria House, 5-15 Newton Street, Holborn, London WC2B 5EN, United Kingdom; 35 Grosvenor Street, London W1K 4QX, United Kingdom; DOB 22 Feb 1991; nationality Cyprus; Gender Male; National ID No. 985049 (Cyprus); alt. National ID No. 286953810001 (United Kingdom) (individual) [RUSSIA-EO14024] (Linked To: VASSILIADES, Christodoulos Georgiou).

Designated pursuant to Section 1(a)(v) of E.O. 14024 for being the spouse or adult child of Christodoulos Georgiou Vassiliades, a person whose property and interests in property are blocked pursuant to E.O. 14024.

**Entities**

1. LIMITED LIABILITY COMPANY NOVELCO (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НОВЕЛКО) (a.k.a. LIMITED LIABILITY COMPANY NOVELKO), 2/2 Aeroportovskaya St., Office 210-2, Solnechnogorsk, Moscow Region 141580, Russia; Tax ID No. 7733744331 (Russia); Registration Number 1107746720322 (Russia) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O 14024 for operating or having operated in the marine sector of the Russian Federation economy.

2. ALL RUSSIAN CHILDREN AND YOUTH MILITARY PATRIOTIC PUBLIC MOVEMENT YOUTH ARMY (Cyrillic: ВСЕРОССИЙСКОЕ ВОЕННО ПАТРИОТИЧЕСКОЕ ОБЩЕСТВЕННОЕ ДВИЖЕНИЕ ЮНАРМИЯ) (a.k.a. ALL-RUSSIA YOUNG ARMY MILITARY PATRIOTIC SOCIAL MOVEMENT; a.k.a. VSEROSSISKOE DETSKO-YUNOSHESKOE VOENNOPATRIOTICHESKOE OBSHCHESTVENNOE DVIZHENIE YUNARMIYA; a.k.a. "YUNARMIA"; a.k.a. "YUNARMIYA"), 1st Krasnokursantskiy Passage, 1/4, Building 1, Moscow 111033, Russia; Znamenka Street, Building 19, Moscow 119160, Russia; Organization Established Date 28 Jul 2016; Tax ID No. 7704366170 (Russia); Registration Number 1167700061540 (Russia) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the

United States, its allies, or its partners for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

3. STATE BUDGETARY EDUCATIONAL INSTITUTION OF ADDITIONAL EDUCATION OF THE REPUBLIC OF CRIMEA CRIMEA PATRIOT CENTER (Cyrillic: ГОСУДАРСТВЕННОЕ БЮДЖЕТНОЕ ОБРАЗОВАТЕЛЬНОЕ УЧРЕЖДЕНИЕ ДОПОЛНИТЕЛЬНОГО ОБРАЗОВАНИЯ РЕСПУБЛИКИ КРЫМ КРЫМПАТРИОТЦЕНТР) (a.k.a. GOSUDARSTVENNOE BYUDZHETNOE OBRAZOVATELNOE UCHREZHDENIE DOPOLNITELNOGO OBRAZOVANIYA RESPUBLIKI KRYM REGIONALNY TSENTR PO PODGOTOVKE K VOENNOI SLUZHBE I VOENNO-PATRIOTICHESKOMU VOSPITANIYU (Cyrillic: РЕГИОНАЛЬНЫЙ ЦЕНТР ПО ПОДГОТОВКЕ К ВОЕННОЙ СЛУЖБЕ И ВОЕННО ПАТРИОТИЧЕСКОМУ ВОСПИТАНИЮ.); a.k.a. KRYMPATRIOTTSENTR; a.k.a. REGIONAL CENTER FOR PREPARATION FOR MILITARY SERVICE AND MILITARY PATRIOTIC EDUCATION.), 60 Let Oktyabrya Street, Building 13/64, Simferopol, Crimea 295044, Ukraine; Organization Established Date 15 Jun 2015; Tax ID No. 9102187450 (Russia); Registration Number 1159102101180 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

4. ARTVIN MARITIME AND TRADE LIMITED COMPANY (Latin: ARTVIN DENIZCILIK VE TICARET LIMITED ŞIRKETI), Ic Kapi 116, Blok A, Monumento Kartal Sitesi, Milangaz Caddesi 75a, Esentepe Mah, Kartal, Istanbul, Turkey; Registration Number 384095-5 (Turkey) [RUSSIA-EO14024] (Linked To: POLA RAIZ OOO).

   Designated pursuant to Section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Pola Raiz, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. SALDA MANAGEMENT MARITIME AND TRADE LIMITED COMPANY (Latin: SALDA MANAGEMENT DENIZCILIK VE TICARET LIMITED ŞIRKETI), Ic Kapi 54, A Blok, Milangaz Caddesi 75A, Esentepe Mah., Kartal, Istanbul, Turkey; Organization Established Date 08 Sep 2022; Registration Number 404946-5 (Turkey) [RUSSIA-EO14024] (Linked To: POLA RAIZ OOO).

   Designated pursuant to Section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Pola Raiz, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. LIMITED LIABILITY COMPANY NOVELCO GLOBAL FORWARDING (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НОВЕЛКО ГЛОБАЛ ФОРВАРДИНГ) (a.k.a. "LLC NGF"), 2 Gorbunova St.,

Building 3, Room 300, Moscow 121596, Russia; Tax ID No. 7733777418 (Russia); Registration Number 1117746710190 (Russia) [RUSSIA-EO14024] (Linked To: GRIGORIEV, Grigoriy Igorevich).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Grigory Igorevich Grigoriev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. LIMITED LIABILITY COMPANY NDN (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НДН), 9A Obukhovskaya St., Solnechnogorsk, Moscow region 141503, Russia; Tax ID No. 5044118129 (Russia); Registration Number 1205000010600 (Russia) [RUSSIA-EO14024] (Linked To: GRIGORIEV, Grigoriy Igorevich).

   Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Grigory Igorevich Grigoriev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. SMART TRADING TRANSPORTATION INDUSTRY AND TRADE LIMITED COMPANY (Latin: SMART TRADING TAŞIMACILIK SANAYI VE TICARET LIMITED ŞIRKETI), Esentepe Mah, 1 Harman St., Duran Business Center, Building 4, Door 8, Sisli, Istanbul, Turkey; Registration Number 369095-5 (Turkey) [RUSSIA-EO14024] (Linked To: GRIGORIEV, Grigoriy Igorevich).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Grigory Igorevich Grigoriev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ХОЛДИНГОВАЯ КОМПАНИЯ ЮЭСЭМ) (a.k.a. LIMITED LIABILITY COMPANY HOLDING COMPANY YUESEM; a.k.a. OOO KHK YUESEM (Cyrillic: ООО ХК ЮЭСЭМ); a.k.a. USM HOLDINGS LIMITED), D. 28 Etazh 13 Kom. 21 Shosse Rublevskoe, Moscow, Russia 121609, Russia; Tax ID No. 9731001285 (Russia); Registration Number 1187746450231 (Russia) [RUSSIA-EO14024] (Linked To: USMANOV, Alisher Burhanovich).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Alisher Usmanov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. AKKERMAN CEMENT OOO (Cyrillic: АККЕРМАНН ЦЕМЕНТ ООО), Ulitsa Zapad, Zdanie 5, Novotritsk, Orenburg Region 462360, Russia; Organization Established Date 23 Oct 2022; Organization Type: Manufacture of articles of concrete, cement and plaster; Tax ID No. 5607015014 (Russia); Registration Number 1025600822510 (Russia) [RUSSIA-EO14024] (Linked To:

OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. AKKERMANN CEMENT CA LIMITED LIABILITY COMPANY (a.k.a. AKKERMAN CEMENT CA MAS ULIYATI CHEKLANGAN JAMIYATI; a.k.a. AKKERMAN CEMENT CA OOO; a.k.a. AKKERMAN CEMENT CENTRAL ASIA; a.k.a. AKKERMAN CEMENT TSA LLC (Cyrillic: ООО АККЕРМАНН ЦЕМЕНТ ЦА); a.k.a. AKKERMANN TSEMENT TSA OOO), Sanoat hududi, Akhangaran, Uzbekistan; Organization Established Date 2006; Tax ID No. 206795734 (Uzbekistan) [RUSSIA-EO14024] (Linked To: AKKERMAN CEMENT OOO).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Akkerman Cement OOO, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

12. AKHANGARANCEMENT JOINT STOCK COMPANY (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО АХАНГАРАНЦЕМЕНТ) (a.k.a. JOINT STOCK COMPANY OHANGARONSEMENT; a.k.a. OHANGARONSEMENT

AKSIYADORLIK JAMIYATIGA), Promzona, g. Akhangaran, Tashkent Province 110300, Uzbekistan; Organization Type: Manufacture of articles of concrete, cement and plaster; Tax ID No. 200463344 (Uzbekistan) [RUSSIA-EO14024] (Linked To: AKKERMANN CEMENT CA LIMITED LIABILITY COMPANY).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Akkermann Cement CA Limited Liability Company, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

13. LIMITED LIABILITY COMPANY USM TELECOM (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЮЭСЭМ ТЕЛЕКОМ) (a.k.a. ООО YUESEM TELEKOM), Rublevskoe Highway, Building 28, Floor 13, Room 40, Moscow 121609, Russia; Organization Established Date 09 Jun 2018; Tax ID No. 9731003959 (Russia); Registration Number 1187746556150 (Russia) [RUSSIA-EO14024] (Linked To: OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

14. NEXIGN JOINT STOCK COMAPNY (Cyrillic: НЭКСАЙН АКЦИОНЕРНОЕ ОБЩЕСТВО) (a.k.a. "NEKSAIN AO"), d. 4 litera B pom. 22N, ul. Uralskaya, St. Petersburg 199155, Russia; Organization Established Date 03 Mar 1992; Organization Type: Other information technology and computer service activities; Tax ID No. 7801019126 (Russia); Government Gazette Number 11150642 (Russia); Registration Number 1027809251744 (Russia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY USM TELECOM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Limited Liability Company USM Telecom, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

15. STORM TECHNOLOGIES LIMITED LIABILITY COMPANY (Cyrillic: ШТОРМ ТЕХНОЛОГИИ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ) (a.k.a. SHTORM TEKHNOLOGII OOO), d. 5, etazh 2 pom. 39 Mesto 1, ul. Nobelaya, Moscow 121205, Russia; Organization Established Date 2016; Tax ID No. 9701058069 (Russia); Registration Number 5167746431694 (Russia) [RUSSIA-EO14024] (Linked To: NEXIGN JOINT STOCK COMAPNY).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Nexign Joint Stock Company, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

16. MEGAFON PAO (Cyrillic: МЕГАФОН ПАО), Pereulok Oruzheinyi, Dom 41, Moscow, Moscow Region 127006, Russia; Organization Established Date 17 Jun 1993; Organization Type: Wireless telecommunications activities; Tax ID No. 7812014560 (Russia); Registration Number 1027809169585 (Russia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY USM TELECOM; Linked To: AF TELECOM HOLDING LIMTIED LIABILITY COMPANY).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Limited Liability Company USM Telecom and AF Telecom Holding Limited Liability Company, entities whose property and interests in property are blocked pursuant to E.O. 14024.

17. HOLDINGOVAYA KOMPANIYA METALLOINVEST AO (Cyrillic: ХОЛДИНГОВАЯ КОМПАНИЯ МЕТАЛЛОИНВЕСТ АО), Shosse Rublevskoe, Dom 28, Et 11, Pom 1, Kom 4, Moscow, Moscow Region 121609, Russia; Organization Established Date 08 Nov 2000; Tax ID No. 7705392230 (Russia); Registration Number 1027700006289 (Russia) [RUSSIA-EO14024] (Linked To: OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

18. MANAGEMENT COMPANY METALLOINVEST LLC (a.k.a. UPRAVLYAYUSHTAYA KOMPANIYA METALLOINVEST OOO (Cyrillic: УПРАВЛЯЮЩАЯ КОМПАНИЯ МЕТАЛЛОИНВЕСТ ООО)), Ulitsa Tsiolkovskogo 14/16, Korolev, Moscow Oblast 141070, Russia; Organization Established Date 06 May 2006; Organization Type: Activities of holding companies; Tax ID No. 5018108484 (Russia); Registration Number 1065018030120 (Russia) [RUSSIA-EO14024] (Linked To: HOLDINGOVAYA KOMPANIYA METALLOINVEST AO).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Holdingovaya Kompaniya Metalloinvest AO, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

19. MIKHAILOVSKIY GORNO OBOGATITELNIY KOMBINAT JOINT STOCK COMPANY (Cyrillic: МИХАЙЛОВСКИЙ ГОРНО ОБОГАТИТЕЛЬНЫЙ КОМБИНАТ АКЦИОНЕРНОЕ ОБЩЕСТВО), Ulitsa Lenina 21, Zheleznogorsk, Kursk Region 307170, Russia; Organization Established Date 24 Jul 1996; Organization Type: Mining of iron ores; Tax ID No. 4633001577 (Russia); Registration Number 1024601215088 (Russia) [RUSSIA-EO14024] (Linked To: HOLDINGOVAYA KOMPANIYA METALLOINVEST AO).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Holdingovaya Kompaniya Metalloinvest AO, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

20. LEBEDINSKIY GORNO OBOGATITELNIY KOMBINAT JOINT STOCK COMPANY (Cyrillic: ЛЕБЕДИНСКИЙ ГОРНО ОБОГАТИТЕЛЬНЫЙ КОМБИНАТ АКЦИОНЕРНОЕ ОБЩЕСТВО) (a.k.a. LEBEDINSKI GOK AO; a.k.a. LEBEDINSKIY GOK JSC; n.k.a. "LGOK"), Industrial Site of LGOK, Gubkin, Belgorod Oblast 309191, Russia; Organization Established Date 1971; Organization Type: Mining of iron ores; Tax ID No. 3127000014 (Russia); Registration Number 1023102257914 (Russia) [RUSSIA-EO14024] (Linked To: HOLDINGOVAYA KOMPANIYA METALLOINVEST AO).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Holdingovaya Kompaniya Metalloinvest AO, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

21. FEDOROVSKOE OOO (Cyrillic: ФЕДОРОВСКОЕ ООО) (a.k.a. FEDOROVSKOE LLC; f.k.a. RG NEDRA 1 LIMITED LIABILITY COMPANY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РГ НЕДРА 1)), 69 Novocheremushkinskaya St., Moscow 117418, Russia; Organization Established Date 04 Jul 2006; Tax ID No. 6821504506 (Russia); Registration Number 1066821015238 (Russia) [RUSSIA-EO14024] (Linked To: USM GOLD LIMITED LIABILITY COMPANY).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, USM Gold Limited Liability Company, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

22. YUESEM MARKIROVKA OOO (Cyrillic: ЮЭСЭМ МАРКИРОВКА ООО) (a.k.a. YUESEM MARKIROVKA LIMITED LIABILITY COMPANY), d. 28 etazh 14 pom. 1 kom. 29, shosse Rublevskoe, Moscow 121609, Russia; Organization Established Date 11 Sep 2018; Tax ID No. 9731010385 (Russia); Registration Number 1187746805520 (Russia) [RUSSIA-EO14024] (Linked To: OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

23. OSKOL ELECTROMETALLURGICAL PLANT AO (Cyrillic: ОСКОЛЬСКИЙ ЭЛЕКТРОМЕТАЛЛУРГИЧЕСКИЙ КОМБИНАТ ИМЕНИ АЛЕКСЕЯ АЛЕКСЕЕВИЧА УГАРОВА АКЦИОНЕРНОЕ ОБЩЕСТВО), Prospekt Alekseya Ugarova, 218, Zdanie 2, Stary Oskol, Belgorod Oblast 309515, Russia; Organization Established Date 29 Apr 1993; Registration ID 1023102358620 (Russia); Tax ID No. 3128005752 (Russia) [RUSSIA-EO14024] (Linked To: HOLDINGOVAYA KOMPANIYA METALLOINVEST AO).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Holdingovaya Kompaniya Metalloinvest AO, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

24. UDOKAN COPPER LLC (Cyrillic: УДОКАНСКАЯ МЕДЬ ООО), ul. Fabrichnaya d. 1, Pos. Udokan 674159, Russia; Organization Established Date 2008; Tax ID No. 7536097029 (Russia); Registration Number 1087536009857 (Russia) [RUSSIA-EO14024] (Linked To: OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

25. USM CITY LIMITED LIABILITY COMPANY (Cyrillic: ЮЭСЭМ СИТИ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ), d. 28 etazh 14 pom. 1 Kom. 29, shosse Rublevskoe, Moscow 121609, Russia; Organization Established Date 30 Mar 2022; Organization Type: Activities of holding companies; Tax ID No. 9731090711 (Russia); Registration Number 1227700182434 (Russia) [RUSSIA-EO14024] (Linked To: OBSHCHESTVO S

OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

26. USM GOLD LIMITED LIABILITY COMPANY (Cyrillic: ЮЭСЭМ ГОЛД ОБЩЕСТВО С ОГРАНИЧЕННОЙ), d. 28 etazh 13 pom. 1 Kom. 21, shosse Rublevskoe, Moscow 121609, Russia; Organization Established Date 30 Nov 2021; Organization Type: Activities of holding companies; Tax ID No. 9731086049 (Russia); Registration Number 1217700580899 (Russia) [RUSSIA-EO14024] (Linked To: OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

27. USM URBAN MINING LIMITED LIABILITY COMPANY (Cyrillic: ЮЭСЭМ УРБАН МАЙНИНГ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬ), d. 28 pom. 1 kom. 1, shosse Rublevskoe, Moscow

121609, Russia; Organization Established Date 17 Jan 2022; Organization Type: Activities of holding companies; Tax ID No. 9731087765 (Russia); Registration Number 1227700010526 (Russia) [RUSSIA-EO14024] (Linked To: OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

28. U-TERRA LLC (Cyrillic: Ю-ТЕРРА ООО) (a.k.a. YU-TERRA LLC), d. 28 pom. 1 kom. 34, shosse Rublevskoe, Moscow 121609, Russia; Organization Established Date 11 Feb 2022; Tax ID No. 9731088695 (Russia); Registration Number 12277000667700 (Russia) [RUSSIA-EO14024] (Linked To: USM URBAN MINING LIMITED LIABILITY COMPANY).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, USM Urban Mining Limited Liability Company, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

29. ZINCUM LLC (Cyrillic: ЦИНКУМ ООО), zd. 1 k. 3, Zheleznogorsk 307170, Russia; Organization Established Date 17 Feb 2022; Tax ID No. 4633041964

(Russia); Registration Number 1224600001438 (Russia) [RUSSIA-EO14024] (Linked To: USM URBAN MINING LIMITED LIABILITY COMPANY).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, USM Urban Mining Limited Liability Company, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

30. METALLOINVEST TRADING AG (a.k.a. "MIT AG"), Alte Steinhauserstrasse 19 Cham, Zug 6330, Switzerland; Organization Established Date 18 Jul 2008; Organization Type: Wholesale of metals and metal ores; Identification Number CHE-114.426.044 (Switzerland); Registration Number CH-17030324476 (Switzerland) [RUSSIA-EO14024] (Linked To: HOLDINGOVAYA KOMPANIYA METALLOINVEST AO).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Holdingovaya Kompaniya Metalloinvest AO, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

31. HAMRIYAH STEEL FREE ZONE COMPANY (Arabic: الحمرية للحديد ش م ح) (a.k.a. HAMRIYAH STEEL FZC), PO Box 42142, Plot 4E-01, Jiddah Street, Hamriyah Free Zone Phase II, Sharjah, Sharjah, United Arab Emirates; Organization Established Date 28 Aug 2008; Company Number 11582020 (undetermined); Business Registration Number 4326 (United Arab Emirates)

[RUSSIA-EO14024] (Linked To: HOLDINGOVAYA KOMPANIYA METALLOINVEST AO).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Holdingovaya Kompaniya Metalloinvest AO, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

32. CITY DEVELOPMENT LIMITED LIABILITY COMPANY (Cyrillic: СИТИ-ДЕВЕЛОПМЕНТ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ) (a.k.a. OOO SITI-DEVELOPMENT), d. 6 str. 2 etazh 2 pomeshch/kom l/35, naberezhnaya Presnenskaya, Moscow 123112, Russia; Organization Established Date 23 Nov 2016; Tax ID No. 7703420058 (Russia); Government Gazette Number 05682317 (Russia); Registration Number 5167746363758 (Russia) [RUSSIA-EO14024] (Linked To: USM CITY LIMITED LIABILITY COMPANY).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, USM City Limited Liability Company, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

33. DIGITAL INVEST LIMITED LIABILITY COMPANY (Cyrillic: ДИДЖИТАЛ ИНВЕСТ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ) (a.k.a. OOO DIDZHITAL INVEST), 28 Rublevskoye Highway, Floor 13, Room 21, Moscow, Russia; Organization Established Date 06 Aug 2020; Organization

Type: Activities of holding companies; Tax ID No. 9731068258 (Russia); Registration Number 1207700277861 (Russia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY USM TELECOM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Limited Liability Company USM Telecom, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

34. INTERNATIONAL DIGITAL TECHNOLOGY CENTRE LIMITED LIABILITY COMPANY (Cyrillic: ЦЕНТРМЕЖДУНАРОДНЫХ ЦИФРОВЫХ ТЕХНОЛОГИЙ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ) (a.k.a. "CMCT LLC"), d. 28 etazh 13 kom. 40, shosse Rublevskoe, Moscow 121609, Russia; Organization Established Date 02 Nov 2020; Organization Type: Activities of holding companies; Tax ID No. 9731072060 (Russia); Government Gazette Number 46260686 (Russia); Registration Number 1207700411137 (Russia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY USM TELECOM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Limited Liability Company USM Telecom, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

35. AF TELECOM HOLDING LIMITED LIABILITY COMPANY (Cyrillic: АФ ТЕЛЕКОМ ХОЛДИНГ ОБЩЕСТВО С ОГРАНИЧЕННОЙ

ОТВЕТСТВЕННОСТЬЮ) (a.k.a. AF TELEKOM HOLDING OOO; a.k.a. AF TELEKOM KHOLDING OOO), d. 18 etazh 3 kom. 64, per.1-l Tverskoi-Yamskoi, Moscow 125047, Russia; Organization Established Date 18 May 2007; Tax ID No. 7715650360 (Russia); Government Gazette Number 80873481 (Russia); Registration Number 5077746801963 (Russia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY USM TELECOM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Limited Liability Company USM Telecom, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

36. ONEFACTOR LIMITED LIABILITY COMPANY (Cyrillic: ЕДИНЫЙФАКТОР ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ) (a.k.a. EDINYFAKTOR OOO; a.k.a. YEDINYIFAKTOR OOO), d. 41 pom. 5.62, per. Oruzheiny, Moscow 127006, Russia; Organization Established Date 29 Jul 2010; Tax ID No. 7729660992 (Russia); Government Gazette Number 66999175 (Russia); Registration Number 1107746601731 (Russia) [RUSSIA-EO14024] (Linked To: MegaFon PAO).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MegaFon PAO, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

37. USM METALLOINVEST LIMITED LIABILITY COMPANY (Cyrillic: ЮЭСЭМ МЕТАЛЛОИНВЕСТ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ) (a.k.a. YUESEM METALLOINVEST OOO), d. 28 str. 3 pom. 12, ul. Povarksaya, Moscow 121069, Russia; Organization Established Date 17 Jun 2018; Organization Type: Activities of holding companies; Tax ID No. 7704882288 (Russia); Government Gazette Number 86555641 (Russia); Registration Number 514774643886 (Russia) [RUSSIA-EO14024] (Linked To: OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

38. WCP MANAGEMENT COMPANY LTD (Arabic: دبليو سي بي مانجمينت كومباني ال تي دي), Al Sarab Tower, ADGM Square, Al Maryah Island, Abu Dhabi, United Arab Emirates; Organization Established Date 19 Dec 2022; Business Number 000008393 (United Arab Emirates); Registration Number 11983159 (United Arab Emirates) [RUSSIA-EO14024] (Linked To: BASHKIROV, Aleksei Vladimirovich).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Aleksei Vladimirovich Bashkirov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

39. LIMITED LIABILITY COMPANY TRANSLINEINVEST (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТРАНСЛАЙНИНВЕСТ) (a.k.a. OOO TRANSLAININVEST), 17 Bolshoy Levshinskiy Lane, Room II, Moscow 119034, Russia; Organization Type: Activities of holding companies; Tax ID No. 7704311301 (Russia); Registration Number 1157746279316 (Russia) [RUSSIA-EO14024] (Linked To: BASHKIROV, Aleksei Vladimirovich).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Aleksei Vladimirovich Bashkirov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

40. ALAYNE INVESTMENTS LIMITED, Dimokritou, 15 Panaretos Eliena Complex, Flat 104, Potamos Germasogeias, Limassol 4041, Cyprus; Organization Established Date 13 Mar 2015; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; Registration Number HE 341514 (Cyprus) [RUSSIA-EO14024] (Linked To: BASHKIROV, Aleksei Vladimirovich).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Aleksei Vladimirovich Bashkirov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

41. IRONHILL HOLDINGS LIMITED, Dimokritou, 15 Panaretos Eliena Complex, Flat 104, Potamos Germasogeias, Limassol 4041, Cyprus; Organization Established Date 20 Mar 2014; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; Registration Number HE 330753 (Cyprus) [RUSSIA-EO14024] (Linked To: BASHKIROV, Aleksei Vladimirovich).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Aleksei Vladimirovich Bashkirov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

42. MASTERSKILL INVESTMENTS LIMITED, Dimokritou, 15 Panaretos Eliena Complex, Flat 104, Potamos Germasogeias, Limassol 4041, Cyprus; Organization Established Date 07 Apr 2016; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; Registration Number HE 354317 (Cyprus) [RUSSIA-EO14024] (Linked To: IRONHILL HOLDINGS LIMITED).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Ironhill Holdings Limited, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

43. HEADEY INVESTMENTS LIMITED, Dimokritou, 15 Panaretos Eliena Complex, Flat 104, Potamos Germasogeias, Limassol 4041, Cyprus; Organization Established Date 31 Dec 2014; Organization Type: Activities of holding companies; Registration Number HE 339642 (Cyprus) [RUSSIA-EO14024] (Linked To: BASHKIROV, Aleksei Vladimirovich).

    Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Aleksei Vladimirovich Bashkirov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

44. WALDAU INVESTMENTS LIMITED, Arch. Makariou III, 276 Lara Court, Limassol 3105, Cyprus; Organization Established Date 20 Sep 2018; Organization Type: Activities of holding companies; Registration Number HE 388890 (Cyprus) [RUSSIA-EO14024] (Linked To: BASHKIROV, Aleksei Vladimirovich).

    Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Aleksei Vladimirovich Bashkirov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

45. LIMITED LIABILITY COMPANY FORUM (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ФОРУМ) (a.k.a. "ООО FORUM"), 15 Olimpiyskaya Street, Suite 8, Novogorsk Micro District, Khimki,

Moscow Oblast 141435, Russia; Organization Established Date 19 Jul 2006; Organization Type: Real estate activities with own or leased property; Tax ID No. 7703600646 (Russia); Registration Number 1067746829292 (Russia) [RUSSIA-EO14024] (Linked To: USMANOV, Alisher Burhanovich).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Alisher Burhanovich Usmanov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

46. LIMITED LIABILITY COMPANY LAND TECHNOLOGIES (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЗЕМЕЛЬНЫЕ ТЕХНОЛОГИИ) (a.k.a. ООО ZEMELNYE TEKHNOLOGII), 29 Vereyskaya Street, Building 134, Office V215, Khimki, Moscow Oblast 121357, Russia; Organization Established Date 01 Mar 2006; Organization Type: Real estate activities with own or leased property; Tax ID No. 7703583101 (Russia); Registration Number 1067746329914 (Russia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY FORUM).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Limited Liability Company Forum, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

47. LIMITED LIABILITY COMPANY NOVOGORSK REAL ESTATE (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НОВОГОРСК

НЕДВИЖИМОСТЬ) (a.k.a. OOO NOVOGORSK NEDVIZHIMOST), 15 Olimpiyskaya Street, Suite 14, Khimki, Moscow Oblast 141435, Russia; Organization Established Date 19 Dec 2011; Organization Type: Real estate activities with own or leased property; Tax ID No. 7729699051 (Russia); Registration Number 5117746034225 (Russia) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY FORUM)

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Limited Liability Company Forum, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

48. CHRISTODOULOS G. VASSILIADES & CO. LLC (a.k.a. CHRISTODOULOS G. VASSILIADES AND CO. LLC), Ledra House, 15 Agiou Pavlou Street, Agios Andreas, Nicosia CY-0115, Cyprus; P.O. Box 24444, Nicosia CY-1704, Cyprus; Organization Established Date 30 Dec 2008; Registration Number HE 244054 (Cyprus) [RUSSIA-EO14024] (Linked To: VASSILIADES, Christodoulos Georgiou).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Christodoulos Georgiou Vassiliades, a person whose property and interests in property are blocked pursuant to E.O. 14024.

49. VASSILIADES & CO UK LIMITED (a.k.a. VASSILIADES AND CO UK LIMITED), 35 Grosvenor Street, 1st Floor Offices, London W1K 4QX, United

Kingdom; Organization Established Date 02 Jan 2015; Registration Number 09371804 (United Kingdom) [RUSSIA-EO14024] (Linked To: VASSILIADES, Christodoulos Georgiou; Linked To: KAMPERI, Kyriaki Demetriou).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Christodoulos Georgiou Vassiliades and Kyriaki Demetriou Kamperi, persons whose property and interests in property are blocked pursuant to E.O. 14024.

50. VASSILIADES & CO. MALTA LIMITED (a.k.a. VASSILIADES AND CO. MALTA LIMITED), 17 Macerata Street, Floriana FRN 1080, Malta; Registration Number C60982 (Malta) [RUSSIA-EO14024] (Linked To: VASSILIADES, Christodoulos Georgiou).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Christodoulos Georgiou Vassiliades, a person whose property and interests in property are blocked pursuant to E.O. 14024.

51. IONICS NOMINEES LIMITED, 20 Vasilissis Freiderikis El Greco House, 1st Floor, Office 104, Nicosia 1066, Cyprus; Organization Established Date 04 Nov 2002; Registration Number HE 134010 (Cyprus) [RUSSIA-EO14024] (Linked To: VASSILIADES, Christodoulos Georgiou)

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Christodoulos Georgiou Vassiliades, a person whose property and interests in property are blocked pursuant to E.O. 14024.

52. LEDRA NOMINEES LIMITED, 20 Vasilissis Freiderikis El Greco House, Apartment 104, Nicosia 1066, Cyprus; 15 Agiou Pavlou, Nicosia 1105, Cyprus; Registration Number HE 60096 (Cyprus) [RUSSIA-EO14024] (Linked To: VASSILIADES, Christodoulos Georgiou).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Christodoulos Georgiou Vassiliades, a person whose property and interests in property are blocked pursuant to E.O. 14024.

53. LEDRA TRUSTEES LIMITED, 15 Agiou Pavlou, Nicosia 1105, Cyprus; 20 Vasilissis Freiderikis El Greco House, Apartment 104, Nicosia 1066, Cyprus; Registration Number HE 60095 (Cyprus) [RUSSIA-EO14024] (Linked To: VASSILIADES, Christodoulos Georgiou).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Christodoulos Georgiou Vassiliades, a person whose property and interests in property are blocked pursuant to E.O. 14024.

54. LEDRA TRUSTEE SERVICES LIMITED, 15 Agiou Pavlou, Nicosia 1105, Cyprus; Registration Number HE 97387 (Cyprus) [RUSSIA-EO14024] (Linked To: VASSILIADES, Christodoulos Georgiou).

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Christodoulos Georgiou Vassiliades, a person whose property and interests in property are blocked pursuant to E.O. 14024.

55. USM CEMENT LLC (Cyrillic: ЮЭСЭМ ЦЕМЕНТ ООО), d. 28, etazh 13 pom. 1 Kom. 21, shosse Rublevskoe, Moscow 121609, Russia; Organization Established Date 05 Jul 2021; Tax ID No. 9731080914 (Russia); Registration Number 1217700315854 (Russia) [RUSSIA-EO14024] (Linked To: OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KHOLDINGOVAYA KOMPANIYA YUESEM)

Designated pursuant to Section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Obshchestvo S Ogranichennoi Otvetstvennostyu Kholdingovaya Kompaniya Yuesem, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

**Vessels**

1. BALTIYSK (UHMA) Roll-on Roll-off Russia flag; Vessel Registration Identification IMO 8318130 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

2. AVRORA ALTAIR (UBYS) Oil Products Tanker Russia flag; Vessel Registration Identification IMO 9300348 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

   Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

3. AVRORA REGUL (UGGU) Oil Products Tanker Russia flag; Vessel Registration Identification IMO 9300350 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

   Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

4. AVRORA SIRIUS (UHSW) Oil Products Tanker Russia flag; Vessel Registration Identification IMO 9313589 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

   Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

5. NAVIS 6 (UAQK) General Cargo Russia flag; Vessel Registration Identification IMO 9868807 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

   Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

6. PETROTRANS 5902 (UBXT9) General Cargo Russia flag; Vessel Registration Identification IMO 9900514 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

   Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

7. VLADIMIR LATYSHEV (UBEV8) General Cargo Russia flag; Vessel Registration Identification IMO 9921996 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

   Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

8. VICTOR ANDRYUKHIN (UBIV4) General Cargo Russia flag; Vessel Registration Identification IMO 9922110 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

9. LEONID PESTRIKOV (UBJV2) General Cargo Russia flag; Vessel Registration Identification IMO 9922122 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

   Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

10. NIKOLAI LEONOV (UBLV9) General Cargo Russia flag; Vessel Registration Identification IMO 9922134 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

    Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

11. ALPHA HELIOS (UBSV3) General Cargo Russia flag; Vessel Registration Identification IMO 9924340 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

    Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

12. ALPHA HERMES (UBDW5) General Cargo Russia flag; Vessel Registration Identification IMO 9924352 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

    Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

13. VYACHESLAV ARSHINOV (UBGX2) General Cargo Russia flag; Vessel Registration Identification IMO 9945136 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

    Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

14. GENNADY EGOROV (UBGX4) General Cargo Russia flag; Vessel Registration Identification IMO 9945124 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

    Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

15. ALEXANDR DEEV (UBSX6) Passenger Russia flag; Other Vessel Type Roll-on Roll-off; Vessel Registration Identification IMO 9940186 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

16. NIKOLAY ANISHCHENKOV General Cargo Russia flag; Vessel Registration Identification IMO 9942392 (vessel) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY).

Identified as property in which JOINT STOCK COMPANY STATE TRANSPORTATION LEASING COMPANY, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

17. ALARA (TCA7253) Bulk Carrier Turkey flag; Vessel Registration Identification IMO 9741724 (vessel) [RUSSIA-EO14024] (Linked To: POLA RAIZ OOO).

Identified as property in which POLA RAIZ OOO, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

18. IPSALA (TCA7254) Bulk Carrier Turkey flag; Vessel Registration Identification IMO 9759666 (vessel) [RUSSIA-EO14024] (Linked To: POLA RAIZ OOO).

Identified as property in which POLA RAIZ OOO, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

19. ULA (TCA7252) Bulk Carrier Turkey flag; Vessel Registration Identification IMO 9780940 (vessel) [RUSSIA-EO14024] (Linked To: POLA RAIZ OOO).

Identified as property in which POLA RAIZ OOO, an entity whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

**Whitney Baird,**

*Principal Deputy Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.*

[FR Doc. 2023–17643 Filed 8–23–23; 8:45 am]

**BILLING CODE 4710–AE–C**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36708]**

### John Howell—Continuation of Control Exemption—Washington, Idaho & Montana Railway LLC

John Howell (Howell), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to exempt from the provisions of 49 U.S.C. 11323 his continuance in control of Washington, Idaho & Montana Railway LLC (WIM), a noncarrier, upon WIM's becoming a Class III rail carrier.

The transaction is related to a concurrently filed verified notice of exemption in *Washington, Idaho & Montana Railway LLC—Operation Exemption—BLPI RR LLC,* Docket No. FD 36707. In that proceeding, WIM seeks an exemption under 49 CFR 1150.31 to operate approximately 43.744 miles of rail line in the County of Latah, Idaho, from milepost 3.32 (Washington/Idaho state line) to milepost 47.06 at Bovill, Idaho (the Line). The Line is owned by the BLPI RR LLC (BLPI RR), a Class III carrier.

According to the verified notice, Howell controls three other Class III carriers: (1) West Erie Shortline Inc. (WESL), which Howell controls through majority stock owned by Northern Illinois & Wisconsin Railway Corporation, d/b/a NIWX Corporation, a non-carrier (NIWX); (2) Blackwell Northern Gateway Railroad Company (BNG), which Howell controls through majority of shares owned either personally or through NIWX; and (3) Davenport Industrial Railroad (DIR), in which Howell holds a minority interest. The verified notice states that Howell will continue in control of WIM upon WIM's becoming a Class III rail carrier. Howell represents that: (1) the rail properties operated by WESL and BNG and those to be operated by WIM do not connect with each other or any railroads in their corporate family; (2) the continuance in control of WIM is not part of a series of anticipated transactions that would connect the rail lines of WESL, BNG, DIR, and WIM with each other or any railroad in the corporate family; and (3) the transaction does not involve a Class I rail carrier. The transaction, therefore, is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 U.S.C. 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, because this transaction involves Class III rail carriers only, the Board may not impose labor protective conditions here.

The earliest this transaction may be consummated is September 7, 2023, the effective date of the exemption (30 days after the verified notice was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 31, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36708, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Howell's representative, John K. Fiorilla, Dyer & Peterson, PC, 605 Main Street, Suite 104, Riverton, NJ 08077–1440.

According to Howell, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 21, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Tammy Lowery,**

*Clearance Clerk.*

[FR Doc. 2023–18248 Filed 8–23–23; 8:45 am]

**BILLING CODE 4915–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket Number USTR–2023–0009]**

### 2023 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) requests comments that identify online and physical markets to be considered for inclusion in the 2023 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). The Notorious Markets List identifies examples of online and physical markets that reportedly engage in or facilitate substantial copyright piracy or trademark counterfeiting. The issue focus for the 2023 Notorious Markets List will examine the potential health and safety risks posed by counterfeit goods.

**DATES:**

October 6, 2023, at 11:59 p.m. ET: Deadline for submission of written comments.

October 20, 2023, at 11:59 p.m. ET: Deadline for submission of rebuttal comments and other information USTR should consider during the review.

**ADDRESSES:** You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov* (Regulations.gov). Follow the instructions for submitting comments in section III below. For alternatives to online submissions, please contact Jake Ewerdt at *notoriousmarkets@ustr.eop.gov* or (202) 395–6862 before transmitting a comment and in advance of the relevant deadline.

**FOR FURTHER INFORMATION CONTACT:** Jake Ewerdt, Deputy Assistant U.S. Trade Representative for Innovation and Intellectual Property, at *notoriousmarkets@ustr.eop.gov* or (202) 395–6862. You can find information about the Special 301 Review, including the Notorious Markets List, at *www.ustr.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The United States is concerned with trademark counterfeiting and copyright piracy on a commercial scale because these illicit activities cause significant financial losses for right holders, legitimate businesses, and governments. In addition, they undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and can pose significant risks to consumer health and safety and privacy and security. Conducted under the auspices of the Special 301 program and the authority of the U.S. Trade Representative to address practices that have significant adverse impact on the value of U.S. innovation, the Notorious Markets List identifies examples of online and physical markets that

reportedly engage in or facilitate substantial copyright piracy or trademark counterfeiting that infringe on U.S. intellectual property (IP).

Beginning in 2006, USTR identified notorious markets in the annual Special 301 Report. In 2010, USTR announced that it would publish the Notorious Markets List as an Out-of-Cycle Review, separate from the annual Special 301 Report. USTR published the first Notorious Markets List in February 2011. USTR develops the annual Notorious Markets List based upon public comments solicited through the **Federal Register** and in consultation with Federal agencies that serve on the Special 301 Subcommittee of the Trade Policy Staff Committee.

The United States encourages owners and operators of markets reportedly involved in piracy or counterfeiting to adopt business models that rely on the licensed distribution of legitimate content and products and to work with right holders and enforcement officials to address infringement. USTR also encourages foreign government authorities to intensify their efforts to investigate reports of piracy and counterfeiting in such markets, and to pursue appropriate enforcement actions. The Notorious Markets List does not purport to reflect findings of legal violations, nor does it reflect the U.S. Government's analysis of the general IP protection and enforcement climate in the country or countries concerned. For an analysis of the IP climate in particular countries, please refer to the annual Special 301 Report, published each spring no later than 30 days after USTR submits the National Trade Estimate to Congress.

## II. Public Comments

USTR invites written comments concerning examples of online and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting that infringe on U.S. intellectual property. USTR also invites written comments for the Notorious Markets List 'issue focus' that highlights an issue related to the facilitation of substantial trademark counterfeiting or copyright piracy. The issue focus for the 2023 Notorious Markets List will examine the potential health and safety risks posed by counterfeit goods.

To facilitate the review, written comments should be as detailed as possible. Comments must clearly identify the market and the reasons why the commenter believes that the market should be included in the Notorious Markets List. Commenters should include the following information, as applicable:

*For online markets that engage in or facilitate substantial counterfeiting:*

- The domain name(s) of the market, the name(s) of the owner(s) or operator(s), the geographic area(s) where the market operates, and whether the market is owned, operated, or otherwise affiliated with a government entity.
- Estimate of the number of goods sold or otherwise made available on the market and any other indicia of the market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods.
- Estimate of the number and types of goods sold or otherwise made available on the market that are counterfeit, either in aggregate or in relation to the total number and types of goods sold or otherwise made available on the market, a description of the methodology used to create the estimate and the timeframe the estimate was conducted, and information supporting the claims of counterfeiting.
- Estimate of economic harm to right holders resulting from the counterfeit goods and a description of the methodology used to calculate the harm.
- Whether the number and types of counterfeit goods or the economic harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Whether the counterfeit goods sold or otherwise made available on the market pose a risk to public health or safety.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Any actions taken by right holders, such as discussing concerns with the market, submitting takedown notices or requests to remove counterfeit goods, sending cease and desist letters, or requesting that the market enforce its terms of service or terms of use, and the outcome of these actions.
- Any actions taken by the market owners or operators to remove, limit, or discourage the availability of counterfeit goods, including policies to prevent or remove access to such goods, or to disable seller or user accounts, the effectiveness of market policies and guidelines in addressing counterfeiting, and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

*For online markets that engage in or facilitate substantial piracy:*

- The domain name(s) of the market, the name(s) and location(s) of the hosting provider(s), the name(s) and location(s) of the owner(s) or operator(s), the geographic area(s) where the market operates, and whether the market is owned, operated, or otherwise affiliated with a government entity.
- Revenue sources such as sales, subscriptions, donations, upload incentives, or advertising, the methods by which that revenue is collected, and the entities that help facilitate the market's revenue.
- Description and estimate of economic harm to right holders resulting from piracy and a description of the methodology used to calculate the harm.
- Whether the number of pirated goods or files, or the economic harm, has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Any actions taken by right holders, such as discussing concerns with the market, submitting takedown notices or requests to remove URLs or pirated content, sending cease and desist letters, or requesting that the market enforce its terms of service or terms of use, and the outcome of these actions.
- Any actions taken by the market owners or operators to remove, limit, or discourage the availability of pirated goods or services, including policies to prevent or remove access to such goods or services, or to disable seller or user accounts, the effectiveness of market policies and guidelines in addressing piracy, and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

*For physical markets that engage in or facilitate substantial counterfeiting or piracy:*

- The market's name(s), street address, neighborhood or shopping district, city, and the identity of the principal owner(s) or operator(s).
- Whether the market is owned, operated, or otherwise affiliated with a government entity.
- Types of counterfeit or pirated products or services sold, traded, distributed, or otherwise made available at the market.
- Volume of counterfeit or pirated goods or services or other indicia of the market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods or services.
- Description and estimate of economic harm to right holders

resulting from the piracy or counterfeiting and a description of the methodology used to calculate the harm.

- Whether the volume of counterfeit or pirated goods or estimates of harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Whether the infringing goods or services sold, traded, distributed, or made available pose a risk to public health or safety.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Additional actions taken by right holders, such as discussing concerns with the market, sending cease and desist letters, sending warning letters to landlords or requests to enforce the terms of their leases, and the outcome of these actions.
- Additional actions taken by the market owners or operators to remove, limit, or discourage the availability of counterfeit or pirated goods or services, the effectiveness of market policies and guidelines in addressing counterfeiting and piracy, and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

**III. Submission Instructions**

All submissions must be in English and sent electronically via *Regulations.gov*. To submit comments, locate the docket (folder) by entering the docket number USTR–2023–0009 in the search bar on the *Regulations.gov* homepage and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the link entitled 'Comment'. You should provide comments in an attached document, and name the file according to the following protocol, as appropriate: Commenter Name or Organization_2023 Notorious Markets. Please include the following information in the 'type comment' field: 2023 Review of Notorious Markets for Counterfeiting and Piracy. USTR prefers submissions in Microsoft Word (.docx) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the 'type comment' field. For further information on using *Regulations.gov*, please select 'how to use *Regulations.gov*' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions. Instead, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

Please include the name, email address, and phone number of an individual who can be contacted if there are issues or questions with the submission. The contact information can be included in the submission or sent to Jake Ewerdt, Deputy Assistant U.S. Trade Representative for Innovation and Intellectual Property, at *notoriousmarkets@ustr.eop.gov* or (202) 395–6862.

For any comment submitted electronically that contains business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily release it to the public. Additionally, the submitter should type 'Business Confidential 2023 Review of Notorious Markets for Counterfeiting and Piracy' in the 'comment' field. Filers of comments containing BCI also must submit a public version. Begin the file name of the public version with the character 'P'. USTR will place the non-business confidential version in the docket at *Regulations.gov* and it will be available for public inspection.

As noted, USTR strongly urges submitters to file comments through *Regulations.gov*. You must make any alternative arrangements in advance of the relevant deadline and before transmitting a comment by contacting Jake Ewerdt at *notoriousmarkets@ustr.eop.gov* or (202) 395–6862.

USTR will post comments in the docket for public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering docket number USTR–2023–0009 in the search field on the home page.

**Daniel Lee,**

*Assistant U.S. Trade Representative for Innovation and Intellectual Property, Office of the United States Trade Representative.*

[FR Doc. 2023–18201 Filed 8–23–23; 8:45 am]

**BILLING CODE 3390–F3–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2023–0153]**

### Agency Information Collection Activities; Renewal of an Approved Information Collection: Truck and Bus Maintenance Requirements and Their Impact on Safety

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew an ICR titled, ''Truck and Bus Maintenance Requirements and Their Impact on Safety'' will allow for a study that focuses on vehicle maintenance and aims to determine the impact of vehicle maintenance requirements on overall motor carrier safety. This information collection supports the DOT Strategic Goal of Safety.

**DATES:** Comments on this notice must be received on or before September 1, 2023.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2023–0153 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mike Lukuc, Program Manager, Technology Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 385–238; *mike.lukuc@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

## Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2023–0153), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2023-0153/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

## Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

## Background

FMCSA's core mission is to reduce crashes, injuries, and fatalities involving large trucks and buses. To aid in accomplishing this, the Agency uses the Compliance, Safety, Accountability (CSA) enforcement program to prioritize and target interventions of those motor carriers who are most likely to be involved in a future crash. As part of the CSA program, the Agency deploys the Safety Measurement System (SMS). SMS uses inspection, crash, and investigation data captured in the Motor Carrier Management Information System to calculate a percentile for each motor carrier. A motor carrier's SMS percentile is based on its past compliance with a complete range of safety-based regulations (such as driver safety, hours of service, driver fitness, and vehicle maintenance, among others). The survey described in this notice focuses on the vehicle maintenance component of those safety regulations. The study goal is to determine what improvements, ranging from better compliance interventions to better vehicle maintenance requirements, would enhance motor carrier safety.

In 2014, the John A. Volpe National Transportation Systems Center conducted a study to assess the effectiveness of SMS in identifying the highest risk motor carriers to be targeted for interventions. One finding from the study was that motor carriers targeted for intervention due to ''vehicle maintenance'' issues (*i.e.,* violations) had a 65 percent higher crash rate compared to the national average. These violations are based on Federal and state inspections of components critical to the safe operation of the vehicle. It is important to recognize that proper and regular preventative maintenance (*i.e.,* systematic maintenance programs) among carriers—rather than Federal and State inspections, which are by nature limited to the most visible or obvious safety-related components—should be the primary activity applied to ensure safe equipment operation. While these initial findings are important, they raise additional questions. One such question is prompted by the stipulation in 49 CFR 396.3(a), which states that every carrier must have a program to ''systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to its control.'' Though this regulation provides some direction, there is no supporting definition of the word *systematic,* and because this term is subjective, it is likely to vary from one carrier to another. The lack of specificity regarding standard intervals for preventative maintenance makes it difficult for Federal and State personnel to evaluate the effectiveness of and compliance with a carrier's maintenance program. Furthermore, the lack of specificity may make it difficult for carriers to ascertain and therefore comply with the regulation's intent.

The current research effort, augmented by the proposed survey, is necessary to improve FMCSA's understanding of the safety impact of preventative vehicle maintenance and to clarify the requirements of § 396.3(a). The study objectives are as follows:

1. Develop an operational definition of *systematic maintenance.*

2. Evaluate whether current regulations and the intervention process could be modified to improve compliance with vehicle maintenance requirements. Examples of such requirements are as follows: (i) Preventative maintenance intervals, (ii) preventative maintenance inspections with adequately trained/equipped mechanics, and (iii) adequacy of motor carriers' maintenance facilities. [However, the results of the survey will be used only to explore what areas of rulemaking and/or other areas, such as policy guidance and training, might be useful in the future; the results of the survey will not be used for rulemaking, per se.]

3. Gather information to assist in establishing minimum standards for inspection intervals, mechanic qualifications and training, and certification of maintenance facilities.

FMCSA is authorized to conduct this research under 49 U.S.C. 31108, Motor Carrier Research and Technology Programs. Under section 31108(a)(3)(C), FMCSA may fund research, development, and technology projects that improve the safety and efficiency of commercial motor vehicle operations through technological innovation and improvement. This information collection supports the DOT strategic goal of Safety.

Under contract to FMCSA, the Virginia Tech Transportation Institute (VTTI) at the Virginia Polytechnic Institute and State University will use online surveys to obtain the data required to address the study objectives. The information collection will be administered in two phases:

*Phase I:* Online Recruitment Survey. This voluntary, seven-question survey will screen carriers and verify their eligibility for Phase II participation. To be eligible for Phase II participation, carriers must fall into one of two groups: (a) The Recommended Practices (RP) Group, which includes carriers with the lowest Vehicle Maintenance and Crash Indicator Behavior Analysis and Safety Improvement Categories (BASIC) percentiles (*i.e.,* less than or equal to the 33rd percentile); or (b) the Intervention Effects (IE) Group, which includes carriers that have experienced Federal or State interventions in the last 24 months due to vehicle maintenance violations. The BASICs are Unsafe Driving, Crash Indicator, Hours-of-Service (HOS) compliance, Vehicle Maintenance, Controlled Substances/Alcohol, Hazardous Materials (HM) Compliance, and Driver Fitness. More information on the SMS methodology can be found at *https://csa.fmcsa.dot.gov/Documents/SMSMethodology.pdf.*

*Phase II:* Carrier Maintenance Management Survey. This voluntary, 108-question survey will include questions about demographics; maintenance practices, intervals, personnel, and facilities; and State and Federal inspections, among other things. The Phase II survey will employ branch logic; as such, carriers will be prompted to complete different sections based on their survey group (and for one section, carrier size). Consequently, no participating carrier will be asked to complete all 108 questions.

In the Phase II survey, carriers (of all sizes) in the RP Group will be asked to provide additional information about maintenance personnel and facilities (*e.g.,* mechanic training levels, tools required for adequate inspection, and certification of facilities) and vehicle maintenance issues that may impact safety. Information from the RP Group will seek to address Objective 1, relating to development of an operational definition of *systematic maintenance,* Objective 2, and Objective 3, relating to establishment of minimum standards for inspection intervals, mechanic qualifications and training, and certification of maintenance facilities.

Carriers in the IE Group will be asked to complete the section on intervention effects, which includes questions about the status of active interventions or investigations; results of closed interventions or investigations; interactions with State versus Federal agencies; intervention activities experienced; the accuracy of violations leading to interventions; actions taken in response to interventions; changes in carrier vehicle maintenance practices as a result of an intervention; significant benefits of interventions; and ways the intervention process could be improved. Information provided by the IE Group will address the portion of Objective 2 regarding sufficiency of regulations and where interventions need to be improved to facilitate complying with these regulations.

Survey responses will be summarized and reported using plots, tables, content analysis, and calculated summary statistics. Plots and tables will provide a visual comparison of multiple choice and checkbox survey responses for successful carriers (*i.e.,* carriers in the RP Group) and those receiving interventions in the last 24 months (*i.e.,* carriers in the IE Group). These methods will also allow researchers to summarize responses by carrier operation type (*i.e.,* truck or bus) and size. Bar charts will be used to plot responses to many survey questions. Some survey responses may be summarized with tables with rows for each of the carrier operation types (truck or bus) and each carrier-size subgroup. To explore and summarize responses to open-ended survey questions, researchers will use content analysis methods. An illustration of an open-ended question in the survey is ''List examples of critical safety-related maintenance activities for trailer vehicle milestones.'' The goal of content analysis of open-ended questions will be to identify common answers.

The results of this information collection will be documented in a technical report to be delivered to and published by FMCSA. In addition, the results will be used to create a ''recommended best practices'' report that will outline minimum standards for inspection intervals, mechanic qualifications and training, and certification of maintenance facilities. Finally, VTTI is required under the contract with FMCSA to compile and analyze the collected information and develop a public-use data set.

If this data collection does not take place, the truck and bus industry would continue to operate with the uncertainty of what a ''systematic maintenance'' program, as currently worded in § 396.3(a), consists of. This term's ambiguous definition makes it difficult for Federal and State inspectors to evaluate the effectiveness of a carrier's maintenance program or its compliance with this provision. Furthermore, this uncertainty may make it difficult for carriers to ascertain and therefore comply with the regulation's intent.

*Title:* Truck and Bus Maintenance Requirements and Their Impact on Safety.

*OMB Control Number:* 2126–0069.

*Type of Request:* Extension of a currently approved ICR.

*Respondents:* Freight motor carriers and passenger carriers.

*Estimated Number of Respondents:* 578 respondents [578 respondents will complete the Online Recruitment Survey. Of those 578 respondents, 289 will also complete the Carrier Maintenance Manager Survey].

*Estimated Time per Response:* Varies [Online Recruitment Survey: 5 minutes. Carrier Maintenance Manager Survey: 45 minutes.]

*Expiration Date:* November 30, 2023.

*Frequency of Response:* Annually.

*Estimated Total Annual Burden:* 265 hours [Online Recruitment Survey: 578 respondents × (5 minutes ÷ 60 minutes) = 48 hours; Carrier Maintenance Manager Survey: 289 respondents × (45 minutes ÷ 60 minutes) = 217 hours].

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

**Thomas P. Keane,**

*Associate Administrator, Office of Research and Registration.*

[FR Doc. 2023–18236 Filed 8–23–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2023–0172]**

### Agency Information Collection Activities; New Information Collection: Impact of Driver Detention Time on Safety and Operations

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This notice invites comments on a proposed information collection titled *Impact of Driver Detention Time on Safety and Operations.* This research study will collect data on commercial motor vehicle (CMV) driver detention time representative of the major segments of the motor carrier industry, analyze that data to determine the frequency and severity of detention time, and assess the utility of existing intelligent transportation systems (ITS) solutions to measure detention time. Approximately 80 carriers and 2,500 CMV drivers will provide data in the study. The study will provide a better understanding of the impact of driver detention time on driver safety and CMV operations and inform strategies that may be used to mitigate driver detention time.

**DATES:** Comments on this notice must be received on or before October 23, 2023.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2023–0172 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail: Dockets Operations;* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Dan Britton, Office of Research and Registration, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–9980; *dan.britton@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

#### Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2023–0172), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2023-0172/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision making. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

#### Background

''Detention time'' refers to the extra time commercial motor vehicle (CMV) operators wait at shipping and receiving facilities due to delays associated with the loading and unloading of cargo. Drivers are often not paid for this extra time. Although there is currently no standard definition of detention time, the CMV industry, the U.S. Government, and academic detention research in the United States have typically used dwell time—the total amount of time spent at a facility—exceeding 2 hours to define when detention time occurs.

Detention time in the CMV industry is a longstanding issue and consistently ranks as one of the top problems for a large portion of CMV operators on an ongoing basis. Further, detention time often results in lost revenue for many drivers and carriers. Reducing detention time may reduce costs for carriers, increase pay for drivers, and improve CMV drivers' ability to make deliveries on time or arrive at a destination as planned without violating hours of service (HOS) requirements. Finally, drivers who experience less detention time may be more likely to drive safely to reach their destinations within the HOS limits and less likely to operate beyond HOS limits and improperly log their driving and duty time to make deliveries on time.

An important first step in addressing detention time is understanding the factors that contribute to the issue. FMCSA completed a study in 2014 on the impact of detention time on CMV safety. Although this study provided valuable initial insights, it had several limitations, including a small sample of mostly large carriers, a rudimentary estimation of detention time, the inability to identify time spent loading/unloading, and data that did not cover an entire 12-month period. Therefore, FMCSA needs additional data from a broader sample of carriers to understand the safety and operational impact of detention time, to better understand why detention time occurs, and to identify potential mitigation strategies the CMV industry may use to reduce

detention time while improving operational efficiencies and safety.

The purpose for obtaining data in this study is to evaluate the impact of driver detention time on safety and CMV operations. Specifically, there are three primary objectives for the data collection in this study: (i) assess the frequency and severity of driver detention time using data that represent the major segments of the motor carrier industry; (ii) assess the utility of existing ITS solutions to measure detention time; and (iii) prepare a final report that summarizes the findings, answers the research questions, and offers strategies to reduce detention time. Completing these research objectives will provide insight into any relationship between driver detention time and CMV safety. Additionally, the findings from this study can contribute to a more complete understanding of these issues and facilitate private sector decisions that lead to reductions in detention time and improvements in safety and supply chain efficiency.

The study includes data collection via electronic logging devices (ELDs), transportation management systems (TMS), vehicle telematic systems, safety records, and answers to questions delivered through the carriers' dispatching systems. The TMS, ELD, telematics, and safety data are already collected by carriers. The only additional data that will be collected will be the answers to questions submitted through the carriers' dispatching systems. This information will allow FMCSA to identify the severity and frequency of detention time, the factors that contribute to detention time, and the administrative, operational, and safety outcomes of detention time. After agreeing to participate in the study, carriers will collect and provide 12 months of data.

The carriers will be selected so that the sample is representative of the nation. Carriers will primarily be selected from the approximately 3,000 SpeedGauge clients in the Driven Data Clearinghouse, which is maintained by SpeedGauge and combines vehicle, telematics, ELD, and vehicle claims data. However, the study may include other carriers that express interest in participating. The final sample from this source will include up to 80 carriers with up to 2,500 total vehicles. This sample will include a variety of carrier operations, including long haul/short haul, private/company fleets and for-hire fleets, port servicing (primarily chassis), owner-operators, hourly and mileage-based operators, truckload/less-than-truckload, and dedicated local delivery. These carriers will range in size from single-vehicle owner-operators to carriers with hundreds of trucks, with a likely average fleet size of 31 vehicles. Multiple analyses will be performed, including assessing the relationships between detention time and characteristics of carriers, facility locations, and driver schedules (appointment times, time of day, day of week, month, and season). Measures of detention time will include the number of detained stops per shift and the duration of each detention. Regression models will be used to compare these variables for significant differences in associated detention time.

Another analysis will examine the relationship between detention time and safety outcomes during the shifts following the detention time. The relationships between detention time and safety outcomes will be evaluated by generalized linear models such as Poisson or negative binomial regression models. The independent variables will be the characteristics of detention time, such as detention time per shift. The response variable will be the number of safety outcomes (*e.g.,* crashes) that occurred during the subsequent shift. The driving time will be treated as an exposure variable to normalize crash risk with respect to driving time.

Finally, the study will estimate the cost per year associated with detention time, including lost productivity, disruptions to the supply chain, and any increases in fatal, injury, and property-damage-only crashes.

*Title:* Impact of Driver Detention Time on Safety and Operations.

*OMB Control Number:* 2126–00XX.

*Type of Request:* New ICR.

*Respondents:* CMV carriers and drivers.

*Estimated Number of Respondents:* 80 carriers and 2,500 CMV drivers.

*Estimated Time per Response:* 30 seconds (for drivers and the operation team).

*Expiration Date:* This is a new ICR.

*Frequency of Response:* Once per delivery/pick-up.

*Estimated Total Annual Burden:* 8,112.50 hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

**Thomas P. Keane,**

*Associate Administrator, Office of Research and Registration.*

[FR Doc. 2023–18239 Filed 8–23–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2021–0183]**

## Agency Information Collection Activities; New Information Collection Request: Non-Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5872

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the information collection request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This information collection (IC) is voluntary and may be utilized by medical examiners (ME) responsible for issuing Medical Examiner's Certificates, Form MCSA–5876, to individuals diagnosed with non-insulin-treated diabetes mellitus who operate commercial motor vehicles (CMV) in interstate commerce. MEs choosing to use this IC will do so in an effort to communicate with treating healthcare providers who manage the diabetes care of individuals diagnosed with non-insulin-treated diabetes mellitus who operate CMVs. The information obtained by MEs will assist them in determining whether an individual diagnosed with non-insulin-treated diabetes mellitus meets FMCSA's physical qualification standards. One comment from the public was received in response to the 60-day **Federal Register** notice.

**DATES:** Comments must be received on or before September 25, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public

Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 6th Floor, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Non-Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5872.

*OMB Control Number:* 2126–00XX.

*Type of Request:* New collection.

*Respondents:* Treating healthcare providers of individuals who are diagnosed with non-insulin treated diabetes mellitus who operate CMVs.

*Estimated Number of Respondents:* 242,057 respondents.

*Estimated Time per Response:* 8 minutes.

*Expiration Date:* N/A. This is a new ICR.

*Frequency of Response:* Other (Voluntary use at the medical discretion of the ME).

*Estimated Total Annual Burden:* 32,274 hours.

**Background**

The primary mission of FMCSA is to reduce crashes, injuries, and fatalities involving CMVs (large trucks and buses). CMVs are longer, heavier, and more difficult to maneuver than automobiles. Not only does it take a skilled driver to operate them safely, it takes a physically and mentally fit driver to do so as well. Information used to determine and certify driver medical fitness helps to promote and maintain safety on our nation's highways.

FMCSA is required by statute to establish minimum standards for the physical qualifications of drivers who operate CMVs in interstate commerce for non-excepted industries (49 U.S.C. 31136(a)(3) and 31502(b)). The regulations applicable to this collection are outlined in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 CFR part 391, subpart E. The FMCSRs in § 391.41(b) [1] set forth the physical qualification standards that individuals operating CMVs in interstate commerce who are subject to part 391 must meet. The FMCSRs covering the performance of the CMV physical qualification examination of individuals who operate in interstate commerce by an ME and the related recordkeeping requirements are found at § 391.43. The results of the examination must be recorded in accordance with the requirements set forth in that section; they include preparing and maintaining a Medical Examination Report Form, MCSA–5875, and, if the individual is physically qualified, issuing a Medical Examiner's Certificate, Form MCSA–5876.

The FMCSRs in § 391.41(b)(1) through (13) generally include the physical qualification standards required for the medical certification of individuals who operate a CMV in interstate commerce. The physical qualification standards in § 391.46 address the physical qualification requirements for medical certification of individuals who are diagnosed with diabetes mellitus and are treated with insulin. However, the FMCSRs do not specifically address individuals who are diagnosed with diabetes mellitus and are treated with non-insulin therapy. The type of diabetes mellitus that is not treated with insulin (commonly known as Type 2 diabetes) is recognized as a health concern for the general public.

Non-insulin-treated diabetes mellitus that is not properly managed and controlled may lead to diabetes complications and/or target organ damage, and may result in the individual's physical condition being inadequate to enable the driver to operate a CMV safely. The physical qualification standards in the FMCSRs broadly address some of the conditions and symptoms that may be attributable to complications from non-insulin-treated diabetes mellitus. Examples include the loss of limb and limb impairment standards (§ 391.41(b)(1) and (2)); the cardiovascular standard (§ 391.41(b)(4)); the rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular standard (§ 391.41(b)(7)); and the loss of consciousness standard (§ 391.41(b)(8)).

In performing a thorough assessment and evaluation of an individual diagnosed with non-insulin-treated diabetes mellitus, the ME may need to consult with the individual's treating healthcare provider who manages the individual's diabetes. The ME may find this helpful in determining whether the individual has any medical conditions or symptoms, such as frequent episodes of severe hypoglycemia, that may prevent the individual from meeting the physical qualification standards and receiving a Medical Examiner's Certificate, Form MCSA–5876. This voluntary collection would ensure that the treating healthcare provider includes the appropriate information, via the Non-Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5872, in a standardized manner, which would assist the ME in making an informed and sound physical qualification determination.

In May 2021, FMCSA's Medical Review Board (MRB) deliberated on the topic and contents of a draft Non-Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5872 (Task 21–2). FMCSA directed the MRB to review and comment on whether the information on the proposed form provided sufficient information concerning the treatment, management, and control of an individual's non-insulin-treated diabetes mellitus condition to assist an ME in making an appropriate physical qualification determination. The Agency also requested that the MRB identify any areas of ambiguity as well as additional information that FMCSA should include on the form. Based on its review, the MRB made some recommendations to improve the clarity and quality of information on the Non-Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5872, which is provided from the individual's treating healthcare provider to the ME.

There is no required collection frequency for the Non-Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5872, because the use of this IC is voluntary and at the discretion of the ME.

The Non-Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5872, will be available as a fillable pdf and may be downloaded from the FMCSA website. Treating healthcare providers may provide the form to the individual, or fax or scan and email the form directly to the ME. Consistent with OMB's commitment to minimizing respondents' recordkeeping and paperwork burdens and the increased use of secure electronic modes of communication, the Agency anticipates that approximately 50 percent of the Non-Insulin-Treated Diabetes Mellitus Assessment Forms, MCSA–5872, will be transmitted electronically.

The information collected on the Non-Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5872, will be used by the ME who requests completion of the form and will not be available to the public. The Non-Insulin-Treated Diabetes Mellitus Assessment Form, MCSA–5872, will become a part of the individual's physical qualification examination records that are maintained and retained by the ME for a period of at least 3 years from the date of the examination.[2]

[1] 49 CFR 391.41; Physical qualifications for drivers. Available at *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-III/subchapter-B/part-391/subpart-E.*

[2] The burden for the ME to file and retain the driver examination forms is covered in the Medical

One comment was received from the American College of Occupational and Environmental Medicine (ACOEM) in strong support of the IC. ACOEM stated there is no standardized resource currently available that provides MEs with a reasonable example of appropriate information to consider when evaluating the medical qualification of a driver with non-insulin-treated diabetes mellitus. The ME would be able to use the information provided to evaluate whether the individual's diabetes mellitus is stable and controlled and to make an informed and sound physical qualification determination for the driver. ACOEM also stated that the burden associated with the form would be reduced if a fillable form is available. FMCSA notes that a fillable form that can be downloaded will be available on FMCSA's website.

*Public Comments Invited:* You are asked to comment on any aspect of this IC, including: (1) whether the proposed collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

**Thomas P. Keane,**

*Associate Administrator, Office of Research and Registration.*

[FR Doc. 2023–18238 Filed 8–23–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2023–0079]**

### Agency Information Collection Activities; Renewal of an Approved Information Collection: Request for Revocation of Authority Granted

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to renew an ICR titled, ''Request for Revocation of Authority Granted.'' There were 0 comments received.

**DATES:** Comments on this notice must be received on or before September 25, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Jeff Secrist, Office of Registration and Safety Information, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–385–2367; *Jeff.secrist@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Revocation of Authority Granted.

*OMB Control Number:* 2126–0018.

*Type of Request:* Renewal of a currently-approved ICR.

*Respondents:* For-hire motor carriers, freight forwarders, and property brokers.

*Estimated Number of Respondents:* 8,699.

*Estimated Time per Response:* 15 minutes (0.25 hours).

*Expiration Date:* September 30, 2023.

*Frequency of Response:* Other (As needed).

*Estimated Total Annual Burden:* 2,175.

#### Background

FMCSA registers for-hire motor carriers of regulated commodities under 49 U.S.C. 13902, surface freight forwarders under 49 U.S.C. 13903, and property brokers under 49 U.S.C. 13904. Each registration is effective from the date specified under 49 U.S.C. 13905 (c). Subsection (d) of 49 U.S.C. 13905 also provides that on application of the registrant, the Secretary may amend or revoke a registration, and hence the registrant's operating authority. Form OCE–46 allows these registrants to apply voluntarily for revocation of their operating authority or parts thereof. If the registrant fails to maintain evidence of the required level of insurance coverage on file with FMCSA, its operating authority will be revoked involuntarily. Although the effect of both types of revocation is the same, some registrants prefer to request voluntary revocation. For various business reasons, a registrant may request revocation of some part, but not all, of its operating authority. This information collection, which supports the DOT Strategic Goal of Safety, is being revised to reflect modified estimates of burden hours and costs. For respondents, the program adjustment has resulted in increased total burden hours and an increase in respondent costs. The burden hour increase is due to an estimated increase in the number of annual filings of Form OCE–46 from 5,901 to 8,699 per year, resulting in an increase of 2,798 responses and 700 burden hours. The estimated annual labor cost for industry resulting from submitting Form OCE–46 is $67,287, an increase of $17,760. The total annual respondent cost has increased by $7,992. This increase is due to the increase in the number of respondents filing paper forms. While the online submission option exists, FMCSA still estimates that approximately 2,310 respondents will continue to file the form by mail, which incurs notarization and postage fees. For the Federal Government, the program costs have increased by $19,707 due to the increase in the number of forms received by FMCSA.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

**Thomas P. Keane,**

*Associate Administrator, Office of Research and Registration.*

[FR Doc. 2023–18237 Filed 8–23–23; 8:45 am]

**BILLING CODE 4910–EX–P**

Qualification Requirements ICR, OMB Control Number 2126–0006, which is currently due to expire on March 31, 2025.

# Reader Aids

**Federal Register**

Vol. 88, No. 163

Thursday, August 24, 2023

## CUSTOMER SERVICE AND INFORMATION



### ELECTRONIC RESEARCH

#### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

#### E-mail

**FEDREGTOC** (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, AUGUST



## CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

382.....50020
1204.....50765

**Proposed Rules:**

21.....53815
25.....55941
27.....55941
29.....55941
39 .....50067, 51739, 51742, 51745, 52055, 53402, 53406, 53823, 54500, 54933, 54935, 54939, 54941, 54944, 54946, 54949, 55953, 55956, 57012, 57902, 57904, 57907
61.....55959
71 .....54248, 54249, 54251, 54252, 54254, 54503, 54952, 54955, 54956, 54959
91.....55941, 55959
121.....55941
125.....55941
135.....55941
401.....56546
413.....56546
415.....56546
431.....56546
435.....56546
437.....56546
440.....56546
450.....56546
460.....56546

### 15 CFR

30.....54234
738.....54875, 56763
742.....54875
744.....57002
774.....56462
902.....53704
950.....56465

### 16 CFR

310.....57333
1309.....54878
1310.....55554

**Proposed Rules:**

432.....56780
801.....54256
803.....54256

### 17 CFR

39.....53664
140.....53664
229.....51896
232.....51896
239.....51896
240.....51896
249.....51896
270.....51404
274.....51404
279.....51404

**Proposed Rules:**

23.....53409
240.....53960
275.....50076, 53960
279.....50076

### 20 CFR

404.....55366, 57004
416.....55366, 57004

**Proposed Rules:**

404.....51747
416.....51747, 57910
422.....51747

### 21 CFR

161.....53764
164.....53764
184.....53764
186.....53764
500.....55559
510.....55559
516.....55559
520.....55559
522.....55559
524.....55559
526.....55559
529.....55559
556.....55559
558.....55559
1300.....50036
1302.....50036
1306.....53377
1308.....50036, 56466

**Proposed Rules:**

146.....55607
161.....53827
164.....53827
184.....53827
186.....53827

### 24 CFR

880.....56764
888.....56764
903.....56764
905.....56764
964.....56764
970.....56764
983.....56764

### 25 CFR

2.....53774
502.....55366
556.....55366
558.....55366

### 26 CFR

1.....50041, 55506

**Proposed Rules:**

1 .....51756, 52057, 57916
5.....52057
54.....51552
301.....52057
602.....52057

### 27 CFR

**Proposed Rules:**

555.....57370

### 28 CFR

**Proposed Rules:**

35.....51948

### 29 CFR

1.....57526
3.....57526
5.....57526
1614.....57879

**Proposed Rules:**

1636.....54714
2510.....54511
2520.....54511
2550.....54511
2590.....51552
4022.....56583
4044.....56583
4050.....56583
4262.....56583
4281.....56583

### 30 CFR

250.....57334
285.....54880
1206.....53790, 57881
1208.....53790
1217.....53790, 55571
1220.....53790

**Proposed Rules:**

56.....54961
57.....54961
60.....54961
70.....54961
71.....54961
72.....54961
75.....54961
90.....54961
926 .....52082, 52084, 52086

### 31 CFR

555.....52026
587.....52038
591.....52038, 52039
802.....57348

**Proposed Rules:**

Ch. VIII.....54961

### 32 CFR

1700.....51234

### 33 CFR

100 .....54487, 55572, 56469, 56766
117 .....54487, 54488, 56470
165 .....50042, 50765, 51699, 51701, 54237, 54489, 54880, 55371, 55373, 55375, 55572, 55913, 55915, 56768, 56770, 57004, 57006, 57352, 57354, 57356, 57882
207.....51234
326.....51234

**Proposed Rules:**

100.....51763, 57374
165.....57378

### 34 CFR

Ch. II.....54882

### 36 CFR

1190.....53604

**Proposed Rules:**

1195.....50096

### 37 CFR

6.....50767
201.....54491
205.....54491
385.....54406

### 38 CFR

38.....51236

**Proposed Rules:**

17.....54972

### 39 CFR

111.....54239

### 40 CFR

52 .....50770, 50773, 51702, 51711, 51713, 53793, 53795, 53798, 53800, 53802, 54240, 54899, 55377, 55379, 55383, 55576, 57358, 57361, 57882
70.....53802
80.....51239
180 .....52040, 53806, 54244, 55578, 56772, 56773, 57887, 57891, 57894, 57898
260.....54086
261.....54086
262.....54086
264.....54086
265.....54086
266.....54086
270.....54086
271 .....54086, 55387, 55394
272.....55394
300.....55582
441.....54086

**Proposed Rules:**

2.....54118
51.....54118
52 .....53431, 54257, 54259, 54534, 54975, 54983, 54996, 54998, 55428, 56787, 57014, 57018, 57020
62.....56787
63.....55858, 57381
98.....50282
123.....55276
124.....55276
147.....55610
180.....57026
232.....55276
233.....55276
257.....55220
260.....53836, 54537
261.....53836, 54537
262.....53836, 54537
263.....54537
264.....53836, 54537
265.....53836, 54537
266.....53836, 54537
267.....54537
268.....54537
270.....53836, 54537
271.....53836, 55429
272.....55429
300.....55611
441.....53836
745.....50444

### 41 CFR

60–1.....51717
60–2.....51717
60–4.....51717
60–20.....51717
60–30.....51717
60–40.....51717
60–50.....51717
60–300.....51717, 57009
60–741.....51717, 57009

### 42 CFR

73.....54247
405.....57901
410.....57901
411.....53200, 57901
412 .....50986, 51054, 57901
413.....53200, 57901
416.....57901
417.....50043
418.....51164
419.....57901
422.....50043
423.....50043
424.....51164, 57901
455.....50043
460.....50043
485.....57901
488.....53200
489.....53200, 57901

**Proposed Rules:**

405.....52262, 57029

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

**Last List August 9, 2023**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/—layouts/PG/register.aspx*.

**Note:** This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.