FEDERAL REGISTER

Vol. 88 Monday,

No. 236 December 11, 2023

Pages 85817–86028

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.*

Contents

Federal Register

Vol. 88, No. 236

Monday, December 11, 2023

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.

3 CFR

Proclamations:
10683.....85817

Executive Orders:
14112.....86021

7 CFR
989.....85819

10 CFR
50.....85824
52.....85824
100.....85824

12 CFR
609.....85825

13 CFR

Proposed Rules:
121.....85852

14 CFR
39 (2 documents) 85833, 85836

Proposed Rules:
39.....85856
71 (2 documents) 85858, 85860

16 CFR

Proposed Rules:
1264.....85861
1408.....85862

30 CFR
946.....85838

38 CFR

Proposed Rules:
36.....85863

39 CFR
233.....85851

Federal Register
Vol. 88, No. 236
Monday, December 11, 2023

Presidential Documents

Title 3—

The President

Proclamation 10683 of December 6, 2023

National Pearl Harbor Remembrance Day, 2023

By the President of the United States of America

A Proclamation

On this day 82 years ago, 2,403 service members and civilians were killed in a painful and unprovoked attack on our Armed Forces. On National Pearl Harbor Remembrance Day, we remember these women and men, who gave their last full measure of devotion to our Nation. We honor the brave service members who—with the horrors of Pearl Harbor weighing on their hearts and the hopes of humanity resting on their shoulders—answered the call to defend freedom against the forces of fascism during World War II.

The stories of the Greatest Generation's ultimate courage and commitment continue to inspire an enduring sense of unity and purpose throughout our Nation. They remind us that, in the darkest of moments, we have the power to bend the arc of history toward a freer and more just future. They remind us that, from death, destruction, and division, we can build a better world—one grounded in peace and security. They remind us that the forces of tyranny and terrorism are no match for the flame of liberty that burns in the hearts of free people everywhere. Above all, they remind us that every generation can—and must—defeat democracy's mortal foes.

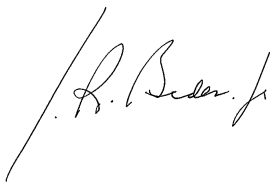
Together, we must continue to answer that call. We must continue to honor our sacred obligation to care for our service members; veterans; and their families, caregivers, and survivors—including our World War II veterans, who dared all and risked all for our country. With bipartisan support in the Congress, my Administration is meeting that obligation—including now welcoming all World War II veterans to enroll in Veterans Affairs health care services, regardless of length of service or financial status.

As we honor the patriots who perished on this tragic day 82 years ago and the service members who defended democracy in the days and years that followed, let us carry forward their mission of forging a better future for humankind, one of greater dignity, opportunity, and security for all. Let us remember that we are the United States of America—and there is nothing beyond our capacity if we do it together.

The Congress, by Public Law 103–308, as amended, has designated December 7 of each year as ''National Pearl Harbor Remembrance Day.'' Today, let us commemorate the patriots who were wounded and who perished on December 7, 1941, and continue to fulfill our sacred obligation to care for our service members; veterans; and their families, caregivers, and survivors.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim December 7, 2023, as National Pearl Harbor Remembrance Day. I encourage all Americans to reflect on the courage shown by our brave service members that day and remember their sacrifices. I ask us all to give sincere thanks and appreciation to the survivors of that unthinkable day. I urge all Federal agencies, interested organizations, groups, and individuals to fly the flag of the United States at half-staff on December 7, 2023, in honor of those American patriots who died as a result of their service at Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.



[FR Doc. 2023–27218
Filed 12–8–23; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register
Vol. 88, No. 236
Monday, December 11, 2023

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–SC–23–0062]

Raisins Produced From Grapes Grown in California; Temporary Relaxation of Substandard and Maturity Dockage Requirements

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Interim rule.

SUMMARY: This rule temporarily changes the substandard and maturity dockage requirements for raisins covered under the Federal marketing order for raisins produced from grapes grown in California (Order). For the 2023–2024 crop year, the minimum requirements for substandard and maturity dockage in the marketing order's handling regulations will be relaxed to accommodate raisins adversely impacted by severe weather conditions.

DATES: Effective on December 12, 2023. Comments which are received by February 9, 2024, will be considered prior to the issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or via internet at: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this rule will be included in the record and will be made available to the public on the internet at the address provided above. Please be advised that the identity of the individuals or entities submitting the comments will be made public.

FOR FURTHER INFORMATION CONTACT: Jeremy Sasselli, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901 or Email: *Jeremy.Sasselli@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Assistant to the Director, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), hereinafter referred to as the ''Order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of growers and handlers of raisins operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866, 13563, and 14094 direct agencies to assess 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. Executive Order 14094 directs agencies to conduct proactive outreach to engage interested and affected parties through a variety of means, such as through field offices, and alternative platforms and media. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This interim rule temporarily relaxes the substandard and maturity dockage minimum requirements for incoming raisins covered under the Order for the 2023–2024 crop year. Section 989.58 requires natural condition raisins that do not meet the minimum requirements must be returned by handlers to producers, reconditioned by handlers at the producers' expense, or disposed of in a non-normal outlet such as animal feed at a much-reduced producer price. Provided, that handlers may acquire natural condition raisins which exceed the tolerance established for maturity under a weight dockage system. Under the Order, handlers acquire raisins from producers under a weight dockage system and adjust the creditable fruit weight acquired according to the

percentage of substandard raisins in the lot and/or the percentage of raisins that fall below certain levels of maturity in the lot. Handler payments to producers, and the payment of handler assessments, are based on the creditable weight of raisins acquired by handlers. Due to unusual crop conditions created by extreme weather events which adversely affected the growing conditions of California raisin grape vines, producers and handlers in the industry are seeing a relatively high percentage of the 2023–2024 crop year deliveries of raisins fall outside the minimum requirements of the substandard and maturity dockage system. The situation is the result of unforeseen environmental factors that are showing effects on raisin grapes now after harvest and drying. The temporary relaxation of the substandard and maturity requirements effectuated by this interim rule is expected to mitigate the disruption of the marketing of California raisins caused by adverse environmental conditions on the California raisin industry and provide a cost savings for producers by reducing reconditioning and reinspection costs.

Prior to the 2022–2023 winter, the raisin growing region in California suffered multiple years of extreme drought, which had long-term detrimental effects on California grape vineyards. Further, over the course of the 2022–2023 winter, temperatures across California were colder than average, rainfall in the San Joaquin Valley exceeded normal levels, and snowfall in the Sierra Nevada greatly exceeded normal levels, leading to one of the largest snowpacks on record. Additionally, in 2023 a series of intense storms brought rain onto the record snowpack, causing rapid snowmelt which had disastrous flooding effects in parts of the San Joaquin Valley, including the historic filling of the Tulare Lake Basin. However, the full effect of such severe weather conditions on raisin grape production only became apparent to producers when dehydrators began their grape dehydrating activities in mid to late August 2023.

During its October 5, 2023, meeting, the Committee determined that rain and cold temperatures into late spring and early summer delayed crop maturity and that record rain and snowmelt created exceptionally high humidity levels throughout the production area, causing some bunch rot and mildew issues. In addition, hurricane Hillary perpetuated these conditions at the end of August 2023 by bringing unseasonal and substantial rainfall throughout the raisin growing region. The crop was also late by at least three weeks, and temperatures in September and into October were below average, which extended the raisin drying period and has delayed deliveries to handlers. Thus, raisins delivered to handlers by producers are failing to meet the Order's minimum requirements. This is evident by incoming inspections reported to the Committee since the beginning of the 2023–2024 crop year (August 1) having shown an increase of approximately 160 percent in off-grade natural condition raisins over the average of the past 4 years (29.1 percent versus 11.2 percent). All other varieties of raisins have also shown a 155 percent increase in off-grade over the previous 4-year average (26.0 percent versus 10.2 percent). Relaxing the limits for the 2023–2024 crop year will reduce the number of failing lots of raisins that must either be returned by handlers to producers, reconditioned by handlers at the producers' expense, or disposed of through non-normal outlets. This rule will provide cost savings to producers by minimizing reconditioning and reinspection costs and avoid further delays affecting producer deliveries in the 2023–2024 crop year. The Committee unanimously recommended this action during its October 5, 2023, meeting.

Section 989.58(a) of the Order provides authority for the establishment of incoming grade, quality, and condition requirements for natural condition raisins that are delivered from producers to handlers. This section also contains authority for handlers to acquire natural condition raisins which fall outside the tolerance established for maturity, which includes substandard raisins, under a weight dockage system.

Section 989.701 of the Order establishes the minimum grade and condition standards for natural condition raisins. Product that does not meet those requirements is considered substandard. Handlers may acquire product that is determined to be substandard under a weight dockage system. The regulations delineating the Order's weight dockage system are contained in §§ 989.212 and 989.213. Under those provisions, handler acquisitions of raisins, and payments to producers for such raisins, are adjusted according to the percentage of substandard raisins in each lot and/or the percentage of raisins that fall below certain levels of maturity of each lot. Product that does not meet the minimum requirements under the weight dockage system is considered off-grade and must be returned to producers, reconditioned, or disposed of in an eligible non-normal market outlet that does not compete with standard raisins.

Tolerances for Substandard Raisins

Section 989.701 of the Order's regulations specifies the minimum quality requirements for natural condition raisins. Lots of raisins may contain a maximum percentage, depending on varietal type, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes). Specifically, lots of Natural (sun-dried) Seedless, Monukka, Other Seedless, Dipped Seedless, Oleate and Related Seedless, Other Seedless-Sulfured, and Golden Seedless raisins may contain no more than 5 percent, by weight, of substandard raisins. Lots of Muscat, Sultana, and Zante Currant raisins may contain no more than 12 percent, by weight, of substandard raisins.

Dockage System for Substandard Raisins

Section 989.212 provides that handlers may acquire, under an agreement with a producer, raisins that fall outside the tolerance for substandard raisins specified in § 989.701. Specifically, handlers may acquire any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins which contain from 5.1 through 17.0 percent, by weight, of substandard raisins under a weight dockage system. A handler may also acquire, subject to prior agreement, any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing from 12.1 through 20.0 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired by handlers under the substandard dockage system is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factor from the tables in § 989.212. The dockage factor reduces the weight of the raisin lot by an amount approximating the weight of the raisins needed to be removed for the remainder of the lot to meet minimum grade requirements after processing and packing. The weight determined in this manner represents the creditable weight of the raisins which is used as a basis for applicable handler assessments and handler payments to producers for product received. However, those raisins failing to meet the established substandard tolerance levels (17.0 or 20.0 percent, depending on varietal type) must be returned to the producer or

reconditioned by the handler (at the producer's expense) to bring the lot up to acceptable quality standards or disposed of in an eligible non-normal market outlet that does not compete with standard raisins.

Because of the adverse crop conditions described above, the industry producers and handlers are dealing with a relatively high percentage of the 2023 crop (marketed over the 2023–2024 crop year) that is falling outside the limits of the substandard dockage systems when delivered to handlers. Further, the Committee has reported that, to date, approximately 29.1 percent of natural condition raisins delivered to handlers, and approximately 26.0 percent of all other varieties of raisins, have been off-grade, requiring reworking or disposition into non-normal market outlets. In comparison, the average percentages for off-grade deliveries for the 4 years prior to the 2023–2024 crop year shows approximately 11.2 percent and 10.2 percent, respectively.

The Committee recommended that the allowable maximum percentage of substandard raisins in producer deliveries that can be acquired under the dockage system be increased, from 17.0 to 21.0 percent for Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins, and from 20.0 to 25.0 percent for Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins. Lots containing more than 21.0 or 25.0 percent, depending on varietal type, of substandard raisins will be considered off-grade and require reconditioning before they can be acquired by handlers. This rule makes appropriate changes to § 989.212 to incorporate the Committee's recommendations. The changes will apply for the 2023–2024 crop year only.

Increasing the percentage allowed for substandard raisins in incoming fruit is expected to reduce the number of failed lots of raisins returned by handlers to producers or reconditioned by handers at the producers' expense or disposed of in a non-normal outlet such as animal feed at a much-reduced producer price. Under the relaxation, handlers will be able to acquire more lots of raisins upon first inspection and not experience the potential delay of waiting for failing lots to be reconditioned. The ability to acquire more raisins upon first inspection will help handlers better meet the needs of the market and save producers the cost of reconditioning and reinspecting failed fruit that would otherwise have passed incoming inspections and be received by handlers.

Tolerance for Maturity

Section 989.701 of the Order's regulations specifies that lots of certain varietal types of natural condition raisins must contain a minimum percentage of raisins that are well-matured or reasonably well-matured. Specifically, lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins must contain at least 50 percent, by weight, of raisins that are well-matured or reasonable well-matured, or what is commonly referred to by the industry as the ''B or better'' maturity standard.

Dockage System for Maturity

Section 989.213 provides that handlers may acquire, under an agreement with a producer, raisins falling outside the tolerance for maturity specified in § 989.701. Specifically, handlers may acquire any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, Other Seedless-Sulfured raisins which contain from 35.0 to 49.9 percent, by weight, of well-matured or reasonable well-matured raisins under a weight dockage system. The dockage system is applied similarly to the substandard dockage system previously described. The creditable weight of each lot of raisins acquired by handlers under the maturity dockage system is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factor in the tables in § 989.213. The dockage factor reduces the weight of the raisins needed to be removed for the remainder of the lot to meet minimum maturity requirements after processing and packing. The weight determined in this manner represents the creditable weight of the raisins which is used as a basis for payment of handler assessments and handler payments to producers for product received. Those raisins failing to meet the maturity tolerance level of 35.0 percent are returned to the producer or reconditioned by the handler (at the producer's expense) to bring the lot up to acceptable quality standards. If a lot of raisins is subject to both a maturity and substandard dockage factor, only the highest of the two dockage factors is applied, as stated in § 989.210(d).

In addition, the maturity dockage system is divided into three categories depending on the percentage of well-matured or reasonably well-matured raisins in the lot. The creditable fruit weight of raisins delivered by producers to handlers in the first category, which includes lots containing between 45.0 to 49.9 percent well-matured or reasonably well-matured raisins, is reduced .05 percent for each 0.1 percent the lot is below 50.0 percent down to 45.0 percent. The creditable fruit weight of raisins delivered by producers to handlers in the second category, which includes lots containing between 40.0 to 44.9 percent well-matured or reasonably well-matured raisins, is reduced 0.1 percent for each 0.1 percent the lot is below 44.9 percent down to 40.0 percent. The creditable fruit weight of raisins delivered by producers to handlers in the third category, which includes lots containing between 35.0 to 39.9 percent well-matured or reasonably well-matured raisins is reduced 0.15 percent for each 0.1 percent the lot is below 39.9 percent down to 35.0 percent. Applicable handler assessments and producer payments for product received are reduced accordingly. Because of the adverse crop conditions described above, the industry predicts that a relatively high percentage of the 2023 crop will fall below the 35.0 percent tolerance level for maturity when product is delivered to handlers. So far this crop year, approximately 29.1 percent of natural condition raisins have been off-grade and require reconditioning to enter the market. In addition, approximately 26.0 percent of all other varieties have been off-grade.

The Committee recommended that the minimum allowable level for maturity of raisins delivered by producers that can be acquired under the dockage system be reduced, for the 2023–2024 crop year only, from 35.0 to 30.0 percent under a fourth category in the regulation. The Committee also recommended that the creditable fruit weight of raisin deliveries in this fourth category created for the 2023–2024 crop year, or lots containing between 30.0 to 34.9 percent well-matured or reasonably well-matured raisins, be reduced by 0.2 percent for each 0.1 percent the lot is below 34.9 percent down to 30.0 percent. Applicable handler assessments and producer payments for product received will be reduced accordingly. Lots containing 29.9 percent or less raisins which are well-matured or reasonably well-matured raisins will be considered off-grade and require reconditioning before they can be acquired by handlers. A new paragraph (e) is added to § 989.213 for this fourth category and applies only to product handled during the 2023–2024 crop year.

Similar to relaxing the requirements under the substandard dockage system,

reducing the minimum allowable level for maturity for the 2023–2024 crop year is expected to reduce the number of failed lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense or disposed of in non-normal outlets. Under this relaxation, handlers will be able to acquire more lots of raisins upon first inspection and not continue to experience further delay waiting for failed lots to be reconditioned and reinspected. The ability to acquire more raisins upon first inspection will help handlers better meet the needs of the market and save producers the cost of reconditioning failed fruit that would otherwise have been acquired by handlers under the weight dockage system. In addition, the industry has indicated that there is strong market demand for raisins and requiring a large percentage of the crop to be reconditioned and reinspected will hinder the handlers' ability to fulfill that demand, disrupting the orderly marketing of California raisins. Further, the cost of reconditioning and reinspection is expected to be passed on to the consumer. This rule will allow better movement of product through market channels and is expected to reduce costs for producers, handlers, and possibly consumers.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,700 producers of California raisins and approximately 17 handlers subject to regulation under the Order. Small agricultural producers of raisins are defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than $4.0 million (NAICS code 111332, Grape Vineyards) and small agricultural service firms are defined as those whose annual receipts are equal to or less than $34.0 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Using USDA National Agricultural Statistics Service (NASS) data, the 2022 season average value of utilized production of California processed raisin-type grapes (most of which are dried into raisins) is $376.6 million. Dividing that figure by 1,700 producers yields an annual average revenue per producer of $221,530, well below the SBA large farm size threshold of $4.0 million. Therefore, in terms of average annual sales of processed raisin-type grapes, the majority of California raisin producers may be classified as small entities.

To make a similar computation for handlers, the first step is to estimate a representative handler price received per pound for packaged raisins. Recent USDA purchases under the Commodity Procurement Program provide such an estimate. For the most recent raisin crop year used by the RAC (August 2022–July 2023) the average price paid for packaged raisins purchased by the USDA for feeding programs was $1.56 per pound. For that time period, the RAC provided a list of quantities delivered by handlers. When multiplied by the $1.56 price per pound, the results showed that 5 handlers had annual raisin receipts greater than $34.0 million, the SBA threshold level for a large handler. The remaining 12 handlers out of 17 are small handlers, using the SBA criterion.

This rule relaxes the substandard and maturity dockage requirements specified in §§ 989.212 and 989.213, respectively, of the Order's handling regulations. These sections allow handlers to acquire raisins from producers that do not meet the Order's minimum quality requirements under a weight dockage system. Under the system, handlers adjust their payments to producers for product received, and the payment of Order assessments, according to the percentage of substandard raisins in the lot and/or the percentage of raisins falling below certain levels of maturity. Because of extreme weather issues which adversely affected the growing conditions of the raisin grape vines for the 2023 crop, the industry predicts that a high percentage of the 2023–2024 crop year delivers by producers to handlers will continue to fall outside the current limits of the dockage systems in the handling regulations. Relaxing the minimum requirements under the dockage systems is expected to reduce the number of lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense or disposed of in a non-normal outlet such as animal feed at a much-reduced producer price.

Relaxing the dockage limits for the 2023–2024 crop year will allow handlers to acquire more lots of raisins that would otherwise fail specified tolerances for substandard raisins and maturity. Thus, fewer lots are expected to be returned to producers for reconditioning. Under the revised requirements, transportation costs for hauling raisins to and from the handler's premises, estimated at $24 per ton one way, for reconditioning and reinspection may be eliminated. Producers are also expected to save on reconditioning costs. Producer costs for reconditioning raisins falling below certain maturity levels (usually a ''wash and dry'' process) are estimated at $275–$300 per ton. Producers may also save on reinspection costs at $15.50 per ton because more of their raisins will meet the relaxed incoming substandard and maturity requirements upon first inspection. In addition, producers whose lots of raisins fall into the extended dockage limits for substandard raisins will not have to incur $60 per ton in costs for ''dry reconditioning'' expenses.

Relaxing the dockage limits may cause handlers to incur some additional costs; however, such costs are minimal when considering the alternative, that is to receive significantly less product for the 2023–2024 crop year and to not meet market demand. Thus, the benefits of this rule outweigh such costs. While the incoming quality requirements are relaxed, the outgoing quality requirements under the Order will remain unchanged. The burden of removing substandard raisins or raisins falling below certain levels of maturity will be shifted from producers to handlers. However, although handlers will have to undertake the additional burden of cleaning up the fruit, handlers are better prepared than producers to manage the lower quality raisins efficiently and economically because they already have the processing equipment designed to remove the undesirable fruit. Moreover, without this rule handlers would likely have less fruit available to meet market needs.

The Committee considered several alternatives to the recommended action. An Administrative Subcommittee (Subcommittee) convened on October 3, 2023, to discuss the current crop situation and to submit remediation recommendations to the full Committee. At the meeting, the Subcommittee discussed increasing the allowable amount of substandard fruit from 17.0 to 25.0 percent for Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured. However,

many industry members felt that the 25.0 percent was too high for the current conditions in the market, and ultimately the Subcommittee approved recommending a maximum 21.0 percent allowable tolerance for those varieties of substandard incoming fruit. The Subcommittee also considered whether to maintain the dockage for maturity for percentages between 30 and 35 percent at 0.15 percent or to increase it. There were also discussions regarding revising the tolerance for mold under the quality requirements. The majority of the Subcommittee did not favor any changes for mold tolerances. Ultimately, the Subcommittee voted to recommend to the Committee the changes as contained herein, and the full Committee subsequently voted unanimously to recommend this action to AMS.

The Committee's meetings are widely publicized throughout the production area. The raisin industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. The Subcommittee meeting on October 3, 2023, and subsequent full Committee meeting on October 5, 2023, were each open to the public where any interested parties was able to express views on this issue. In addition, interested persons are invited to submit comments on this interim rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This interim rule would not impose any additional reporting or recordkeeping requirements on either small or large California raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this interim rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, USDA has determined that this interim rule is consistent with and will effectuate the purposes of the Act.

A 60-day comment period is provided to allow interested persons to respond to this interim rule. All written comments timely received will be considered before a final determination is made on this interim rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Raisin producers are facing an unexpected hardship based on unusual crop conditions created by unforeseen extreme weather events that affected the growing conditions of grape vines, causing a high percentage of the 2023–2024 crop year deliveries of raisins to fall outside the minimum requirements of the substandard and maturity dockage system. The effects of the unusual combination of weather-related issues did not show its detrimental effects on the raisin grapes until the harvest and drying process during mid to end of August 2023. (2) Relaxing the limits for the 2023–2024 crop year will reduce the number of failing lots of raisins that must be reconditioned (or disposed of), thus providing relief to producers of the costs they would pay to recondition and reinspect and helps to avoid further disruptions to the orderly marketing of California raisins from the 2023–2024 crop that are currently being delivered to handlers. (3) Handlers are incurring costs for storing raisins that are tagged as off-grade because they fail to meet the current dockage system limits. Handlers would, however, meet the relaxed dockage limits and are looking for current-year relief to these unforeseen issues. (4) Handlers are in immediate need of raisins to meet their seasonal market demand. (5) This action relaxes requirements currently in effect. (6) Producers and handlers are aware of this action which was unanimously recommended by the Committee at a public meeting on October 5, 2023, and need no preparation time to comply. And finally, (7) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 989 as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 989.212, revise paragraph (a) and the notes following paragraphs (b) and (c) to read as follows:

§ 989.212 Substandard dockage.

(a) General. Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins containing from 5.1 through 17.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system: Provided, That, for the 2023–2024 crop year, such raisins containing from 5.1 through 21.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system. A handler may also, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing from 12.1 through 20.0 percent, by weight, of substandard raisins under a weight dockage system: Provided, That, for the 2023–2024 crop year, a handler may acquire such raisins containing from 12.1 through 25.0 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

(b) * * *

Note to paragraph (b): Percentages in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment. Deliveries in excess of 17.0 percent would be off-grade; therefore, the dockage factor does not apply: Provided, That, for the 2023–2024 crop year, deliveries in excess of 21.0 percent would be off-grade; therefore, the dockage factor does not apply.

(c) * * *

Note to paragraph (c): Percentages in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each increment shall be .001 less than the dockage factor for the preceding increment. Deliveries in excess of 20.0 percent would be off grade; therefore, the dockage factor does not apply. Provided, That, for the 2023–2024 crop year, deliveries in excess of 25.0 percent would be off-grade; therefore, the dockage factor does not apply.

■ 3. In § 989.213, revise paragraph (a) and add a new paragraph (e) to read as follows:

§ 989.213 Maturity Dockage.

(a) General. Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins containing from 35.0 percent through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. Provided, That, for the 2023–2024 crop year, such raisins containing from 30.0 through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. The creditable weight of each lot of raisins acquired under the maturity dockage system shall be obtained by multiplying the net weight of the lot of raisins by the applicable dockage factor from the dockage table prescribed in paragraphs (b), (c), (d), and (e) of this section.

* * * * *

(e) For the 2023–2024 crop year, maturity dockage table applicable to lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins which contain 30.0 percent through 34.9 percent well-matured or reasonably well-matured raisins:

Percent well-matured or reasonably well-matured	Dockage factor
34.9	.8480
34.8	.8460
34.7	.8440
34.6	.8420
34.5	.8400
34.4	.8380

Note to paragraph (e): Percentages less than the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .002 less than the dockage factor for the preceding increment.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–27095 Filed 12–8–23; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, and 100

[NRC–2023–0097]

Regulatory Guide: Damping Values for Seismic Design of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG), 1.61, ''Damping Values for Seismic Design of Nuclear Power Plants.'' This RG provides guidance on damping values that the NRC staff finds acceptable for use in the seismic response analysis of seismic Category I nuclear power plant structures, systems, and components. The specified damping values are intended for elastic dynamic seismic analysis where energy dissipation is accounted for by viscous damping.

DATES: Revision 2 to RG 1.61 is available on December 11, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0097 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0097. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals 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.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 2 to RG 1.61 and the regulatory analysis may be found in ADAMS under Accession Nos. ML23284A272 and ML22273A041, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Marcos Rolon Acevedo, Office of Nuclear Regulatory Research, telephone: 301–415–2208; email: *Marcos.Rolon@nrc.gov* and Edward O'Donnell, Office of Nuclear Regulatory Research, telephone: 301–415–3317; email: *Edward.ODonnell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

Revision 2 to RG 1.61 was issued with a temporary identification of Draft Regulatory Guide, DG–1364. RG 1.61, Revision 1, specifies the damping values that the NRC staff considers acceptable for complying with the agency's regulations for seismic analysis. This revision of the RG (Revision 2) provides

additional guidance related to concrete properties and damping values for use in the development of in structure response spectra. It also includes guidance on damping for steel plate composite walls. In addition, it updates the guidance for piping damping in RG 1.61, Revision 1.

II. Additional Information

The NRC published a notice of the availability of DG–1364 in the **Federal Register** on June 13, 2023 (88 FR 38408) for a 30-day public comment period. The public comment period closed on July 13, 2023. Public comments on DG–1364 and the staff responses to the public comments are available under ADAMS under Accession No. ML23284A274.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Issuance of RG 1.61 would not constitute backfitting as that term is defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests (ADAMS Accession No. ML18093B087);'' constitute forward fitting as that term is defined and described in MD 8.4; or affect issue finality of an approval issued under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' as explained in RG 1.61, licensees would not be required to comply with the positions set forth in RG 1.61.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: December 5, 2023.

For the Nuclear Regulatory Commission.

Stephen M. Wyman,

Acting Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–27070 Filed 12–8–23; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 609

RIN 3052–AD53

Cyber Risk Management

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) rescinds and revises its regulations to reflect developments in cyber risk and continuously evolving business practices. We rename the regulations ''Cyber Risk Management.'' The final rule requires each Farm Credit System (System or FCS) institution to implement a comprehensive, written cyber risk management program consistent with the size, risk profile, and complexity of the institution's operations.

DATES: This regulation is effective January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Technical information: Dr. Ira D. Marshall, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4056;

or

Legal information: Jane Virga, Assistant General Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this final rule are to:

- Delete references to the requirements of ''Electronic Signatures in Global and National Commerce Act'' (E–SIGN) (Pub. L. 106–229), which became effective on October 1, 2000. E–SIGN is a statutory requirement that governs electronic transactions relating to the conduct of electronic business, consumer, or commercial affairs. E–SIGN continues to apply to System institutions as statutory requirements.
- Revise part 609 to codify our existing expectations, as well as ensure the relevance and adequacy of risk management practices, corporate governance, and internal control systems at System institutions conducting business in an electronic environment.
- Require each System institution to develop and implement a comprehensive, written cyber risk management program consistent with the size, risk profile, and complexity of the institution's operations.

II. Background

The regulations at 12 CFR part 609 were enacted in 2002 and repeated the statutory requirements of E–SIGN. Our existing information-technology (IT)-related regulations primarily focus on E-commerce terminology and the concept of conducting business in an E-commerce environment. Since then, there have been significant changes and advancements in IT and the System's use of technology to conduct business.

We are responsible, as the System's regulator, to ensure the System's use of IT is consistent with safe and sound operations and complies with the law.

We amend the current E-commerce regulations at part 609 to revise the rules for a broader cyber risk focus and to codify our existing expectations on risk management practices, corporate governance, and internal control systems for conducting business in an electronic environment. The final regulations set forth core principles that serve as the foundation for creating a comprehensive cyber risk management program and framework.

Key definitions include: [1]

- *Information security* refers to the policies, procedures, and technologies used to protect information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction.
- *Cyber security* is the process of protecting information assets and data by preventing, detecting, and responding to cyber attacks.
- *Cyber risk* is any risk associated with financial loss, disruption, or damage to the reputation of an organization due to the failure or unauthorized or erroneous use of its information systems.

A System institution's policies, procedures, and internal controls that manage cyber risk must incorporate information security and cyber security concepts and sound business practices.

[1] FFIEC IT Examination Handbook InfoBase—Glossary, *https://www.ithandbook.ffiec.gov/glossary.*

Appropriate governance and controls over cyber risk can help guide future decision-making about how to mitigate risk while focusing on an institution's strategic goals and objectives.

These cyber risk management regulations allow System institutions to innovate. We recognize that innovation in the System may create different opportunities, challenges, and risks for different institutions. Accordingly, we considered the needs and constraints of all institutions, regardless of size, risk profile, or complexity. We understand cyber risk management programs will vary and there is no one-size-fits-all approach; however, these cyber risk management regulations provide the flexibility for System institutions to innovate based on the institution's unique needs and operations.

System institutions can mitigate challenges and risks through good governance and effective risk management. Strong governance principles and appropriate risk management practices, implemented through sound internal controls, can safeguard against a variety of risks, including those stemming from adopting new technology. However, an institution should never sacrifice safety and soundness for innovation.

These cyber risk management regulations encourage System institutions to implement and develop effective and sound cyber risk management program solutions. We continually communicate these expectations to System institutions in our role as examiner of the System. This rule also considers the role our examinations play in ensuring safe and sound operations of the System.

III. Comments and Our Responses

We received 26 comment letters, all of which came from System institutions or persons affiliated with the System, except one that came from the Independent Community Bankers of America (ICBA). Of the comment letters received, one came from the Farm Credit Council (Council), acting on behalf of its membership. Each of the four Farm Credit banks submitted a letter, as did the Federal Agricultural Mortgage Corporation (Farmer Mac). Many comment letters from System associations expressed support for the Council's letter, with several raising specific issues. The following is a description of the issues raised and our responses.

A. General Comments

Principles-Based Approach

Most of the commenters stated that the proposed rule does not align with a principles-based approach to rule-making. As discussed below, we disagree. As an initial matter, we considered that System institutions vary dramatically in terms of size, risk profile, and complexity of business model. Accordingly, during the rule-making process, we focus on the right blend of principles and specific requirements to achieve a safe and sound System.

Principles-based regulations set forth broad objectives and goals for which System institutions should strive. Thus, this rule does not address every circumstance. The rule attempts to balance an institution's need to develop a cyber risk management program against our mission to promote and protect the safety and soundness of each institution and the System, as a whole. The rule provides flexibility, where appropriate, and establishes minimum standards, where needed. Thus, the rule provides System institutions with parameters and our expectations for the System to establish, among other things, internal controls consistent with a principles-based rule. The regulation provides flexibility for both the FCA and the System to adapt to market developments and evolving technology. We believe we have achieved the correct regulatory balance.

While commenting on this principles-based approach, one institution asked us to minimize examination inconsistency by recognizing and clarifying the appropriate role of management and the board of directors in selecting the appropriate cyber security approach from among the many that may satisfy the overarching principles of the rule. An institution has the flexibility to determine its risk profile and identify appropriate cyber risk management practices. The institution should document its analysis to provide examiners with an opportunity to assess its choices.

This approach acknowledges that there is more than one way to comply with the regulation. We will take a risk-based approach, and not a one-size-fits-all approach, in our examination of each System institution.

Ambiguous, Unclear, or Unfeasible

Several institutions commented that portions of the proposed regulation are unclear or unfeasible. In response, we reviewed the proposed regulation in its entirety to ensure it is written in accordance with plain language principles and to clarify any potentially confusing language.

The rule requires System institutions to develop a program consistent with the size, risk profile, and complexity of the institution's operations. This provides flexibility, consistent with a principles-based approach, to allow each System institution to customize its cyber security program for its particular risk environment. However, to address commenters' concerns, we are adding the term ''risk profile,'' as appropriate throughout the preamble and regulation, to clarify that an institution's program must be based on size, complexity, and risk. Adding the term ''risk profile'' will allow each System institution to customize its cyber risk management program for its unique risk environment.

User Experience

One commenter stated that perfect security is neither possible nor desirable, and there is often a fundamental tradeoff between security and convenience (or user experience). The commenter further stated that while clients appropriately value the security of their information, they are often willing to accept some security risk in exchange for a better user experience.

Although convenience and user experience could compromise security, we believe a risk assessment, including a determination to mitigate or accept certain risks, is critical to an institution's cyber risk management program. Thus, an institution must document why it accepts, transfers, or mitigates the risk. The board has a fiduciary responsibility to ensure a safe and sound operating environment. If the board chooses to accept a risk for convenience or customer experience, the board's approval must be documented.

Leveraging Modern Frameworks

Several commenters suggested the proposed regulation should leverage standard frameworks based on industry standards (*e.g.,* Federal Financial Institutions Examination Council (FFIEC) or National Institute of Standards and Technology (NIST)), which would allow the regulation to remain relevant for rapidly changing technologies.

We agree. As this is a principles-based regulation, in part, linking to standard frameworks will encourage innovation, implementation, and compliance. Referencing industry standards promotes conformity with the cyber risk management rule as institutions innovate and apply rapidly evolving technology and attendant controls.

We also direct System institutions to the June 27, 2017, Informational Memorandum (IM) on ''Reporting Security Incidents and Business Continuity Events to FCA.'' This guidance will assist System institutions to identify and define an incident under 12 CFR 609.930(c)(3)(i) and help determine reporting requirements. The Office of Examination periodically releases informational memoranda to update the System on expectations. We anticipate the continued issuance of such guidance documents in the future, despite the publication of this rule.

Requests To Define Key Terms

Several commenters requested that we define key terms, such as ''effective,'' ''ensure,'' or ''appropriate.'' However, as this is a principles-based rule, we will not define such terms here.

FCA and the institutions it regulates must interpret these terms considering the institution's unique circumstances. What may be ''effective'' or ''appropriate'' at one institution or at one time may not be ''effective'' or ''appropriate'' at another institution with a different risk profile, where there is a different size or complexity, or at a different time. FCA's decision to not define the terms allows an institution to determine what is effective or appropriate at its institution. During the supervisory and examination process, we will apply the regulatory requirements based on the institution's current circumstances, which is consistent with a principles-based rule. Moreover, these terms currently are used without definition throughout our regulations, and we do not believe it appropriate to define the terms in this regulation.

FCS institutions may want to refer to the NIST Computer Security Resource Center's Glossary [2] and FFIEC IT Examination Handbook InfoBase—Glossary [3] as additional resources in defining terms. For further guidance, please refer to our IM dated June 27, 2017, entitled, ''Reporting Security Incidents and Business Continuity Events to FCA,'' for terms like ''Security Event'' and ''Security Incident.''

Conformity With Other Federal Financial Regulators

The ICBA recommends that we harmonize the proposed regulation and guidance with that of the other federal financial regulatory agencies to ensure System institutions operate in a safe and sound manner. In drafting this regulation, we reviewed the cyber security regulations of the federal financial regulatory agencies and included some of the elements of those regulations. We believe the review process was comprehensive and have been unable to identify any other provisions we should include. Nevertheless, we refer System institutions to the FFIEC IT Handbook [4] and NIST [5] for additional guidance and as examples of industry standards.

Reproposing the Proposed Rule

Two System institutions stated that the proposed rule should be pulled back, reworked, and reproposed in the future to allow for additional comments. We disagree. FCA has not updated our technology regulations in years. We believe this updated regulation will help institutions strengthen their cyber security and cyber risk management practices. We provide, through this principles-based rule, flexibility for institutions to develop cyber risk management programs based on institution size, risk profile, and complexity.

Regulatory Burden

One commenter suggested the proposed rule is excessively burdensome and inconsistent with modern industry accepted and dynamic cyber security program standards that System institutions already implemented as part of their cyber security programs. The commenter further stated that the proposed rule would adversely impact the ability and capability of System institutions to establish effective and relevant cyber security programs. Additionally, the commenter said the language was prescriptive and vague. The commenter stated that we should defer to industry standards and not attempt to create competing, duplicative, and non-conforming regulatory requirements.

We agree, in part, and FCA intends through this rulemaking to leverage standard frameworks based on industry standards, such as FFIEC and NIST, as discussed herein. However, consistent with principles-based rulemaking, we reiterate that an institution must develop a program consistent with the size, risk profile, and complexity of the institution's operations. An institution should customize and document the cyber risk management program for its risk environment.

Examination Approach

Several commenters asked how FCA examiners would examine cyber risk management programs at System institutions of different sizes and complexities. Commenters were also concerned the rule does not have specific definitions and thresholds that may lead to inconsistencies in examinations.

Examiners will review cyber risk management programs much like other internal controls programs. There is no one-size-fits-all approach. We know cyber risk management plans will differ based on an institution's size, complexity, and risk profile. The rule outlines items institutions must consider, such as a written cyber risk management program, documented incident response plan, and documented risk assessments, which examiners may review as part of the examination process. We will provide consistency and clarity in our supervision and regulation of the System as it pertains to, among other things, cyber risk management.

B. Comments on Specific Provisions

Mitigating Vulnerabilities (§ 609.905)

Several commenters recommended that we allow each System institution to define the term ''vulnerability'' in proposed § 609.905 based on a modern framework and remove the requirement that ''any'' vulnerability must be remediated. They asserted that System institutions should be allowed to rank and prioritize vulnerabilities based on their defined risk-based program, including allowing known unmitigated vulnerabilities to be assessed and addressed based on that risk assessment. There was also a comment that human capital presents the greatest risk or vulnerability to an institution.

We do not agree that the regulation should include the suggested terminology ''based on a modern framework.'' We believe the commenter's suggested language of ''based on a modern framework'' is vague and could be misinterpreted to allow a System institution to use any modern framework, which could lead to further inconsistencies among System institutions. However, we do agree that an institution should rank and prioritize vulnerabilities based on its cyber risk management program and cyber risk assessment. The vulnerability management program should be commensurate with the size, risk profile, and complexity of the institution and based on sound industry standards and practices.

[2] Glossary |√ CSRC, *https://www.csrc.nist.gov/glossary.*

[3] FFIEC IT Examination Handbook InfoBase—Glossary, *https://www.ithandbook.ffiec.gov/glossary.*

[4] FFIEC IT Handbook, *https://www.ithandbook.ffiec.gov.*

[5] Cybersecurity | NIST, *https://www.nist.gov/cybersecurity.*

A System institution board should identify and document the institution's appetite for risk. Then, the board, with management, should assess the institution's vulnerabilities. Although an institution cannot mitigate every vulnerability, each System institution's board must assess the risk of a vulnerability, decide whether the vulnerability exposes the institution to any undue risk, and document its analysis and conclusions. In some cases, a System institution may assess and identify its risk appetite and accept the risk, which should be documented to allow FCA to examine for safety and soundness, as well as compliance with law.

Mitigating vulnerabilities involves taking steps to implement internal controls that reduce risk. Remediation is the act of removing or eradicating a vulnerability from an IT system. Mitigation, on the other hand, is creating strategies to minimize the potential threat of a vulnerability when it cannot be eliminated immediately. Some vulnerabilities are more difficult to remediate and may require some time to address.

An institution could refer to the FFIEC IT Handbook or NIST Cybersecurity Framework for guidance on how to identify, document, and address a vulnerability within its risk profile.

Privacy and Compliance (§ 609.930(a))

Several commenters disagreed with the second sentence in proposed § 609.930(a), which provided as follows: ''The program must ensure the security and confidentiality of current, former, and potential customer and employee information, protect against reasonably anticipated cyber threats or hazards to the security or integrity of such information, and protect against unauthorized access to or use of such information.'' The commenters were concerned that the phrase ''must ensure'' created an unattainable standard as to the security and confidentiality of information, as any information loss, no matter how insignificant, would appear to violate the rule as drafted. The commenters suggested that we revise this language so the program ''must be designed to protect'' or ''manage the risk'' of protecting the security and confidentiality of information.

We strongly believe there must be controls in place to protect the security and confidentiality of information. Thus, we revise the second sentence of Section 609.930(a) as follows: ''The program must ensure controls exist to protect the security and confidentiality of current, former, and potential customer and employee information, protect against reasonably anticipated cyber threats or hazards to the security or integrity of such information, and protect against unauthorized access to or use of such information.'' The revision to the second sentence of Section 609.930(a) addresses the commenters' concerns and will ensure that an institution has strong controls in place to protect the security and confidentiality of information.

Size and Complexity (§ 609.930(a))

We received numerous comments suggesting that we clarify expectations related to ''size and complexity'' in proposed § 609.930(a). There was a concern that a lack of guidance on ''size and complexity'' will lead to inconsistent expectations of examiners and place additional regulatory burden on smaller institutions. It was also suggested that we acknowledge the role of IT service providers to avoid examination inconsistencies and to reference ''a modern risk management framework.'' Section 609.930(a) requires, in part, each institution to implement a comprehensive, written cyber risk management program consistent with the size, risk profile, and complexity of the institution's operations.

Consistent with our intent for a principles-based rulemaking, we do not define ''size and complexity.'' However, to provide clarity, we include ''risk profile'' and change the phrase to ''size, risk profile, and complexity.'' We do not believe it appropriate to reference ''a modern risk management framework.''

An institution must assess its risk profile. The regulation requires a cyber risk management program to be consistent with size, risk profile, and complexity of an institution. A smaller institution may not be required to assess as many risks as or the same types of risks as a larger institution. However, depending on an institution's complexity, size, and risk profile, it is possible for a smaller institution to have a similar cyber risk management plan range as compared to a larger institution.

Each institution should document its risk-based approach to establishing a cyber risk management plan and scope.

As noted above, to add clarity in response to the size and complexity concerns, we revise the first sentence in this section to insert the phrase ''risk profile'' to help align the regulation with the requirement of providing strong controls commensurate with an institution's size and complexity.

Role of Board and Management (§ 609.930(b))

One commenter stated that although the heading of proposed § 609.930(b) refers to the role of management, the text of this section does not appear to contemplate a defined role for management. The commenter further stated that although management has a significant role in managing cyber risk, the rule assigns many responsibilities to an institution's board of directors, with management providing the services.

We believe that a board of directors must provide appropriate oversight of management to develop, implement, and maintain a cyber risk management program consistent with the board's fiduciary duties and oversight obligations. This section provides that the board must decide who will do what without FCA specifying or telling them what to do step-by-step. We do not want to create a prescriptive rule.

For clarity, we modified the language of this section to remove ''and management'' from the heading. This should clarify that the institution board has oversight responsibility but may delegate day-to-day tasks to management and other employees, as appropriate.

Timely Remediation (§ 609.930(c)(2))

Proposed § 609.930(c)(2) requires institutions to ''perform timely remediation.'' Several commenters stated the regulation does not define the term ''timely,'' which could lead to inconsistencies and misaligned expectations between examiners and institutions. One commenter recommended we define ''timely'' by directing System institutions to leverage modern frameworks based on industry standards, customized for its institution's risk environment, and aligned with its documented risk-based approach.

This is a principles-based rule. Institutions have an opportunity to be innovative and develop their own metrics and identify material matters relevant and specific to their institutions. Metrics will vary from System institution to System institution depending on risks, threats, and cyber risk management program.

As to defining ''timely,'' we understand the commenters' concerns. However, remediation evaluation should begin immediately after the vulnerability has been identified. The word ''timely'' is intended to provide institutions some flexibility. A minor vulnerability, depending on the circumstances presented, may not need to be addressed immediately, but a

major vulnerability must be addressed immediately.

Thus, we finalize this section as proposed.

Incident Response Planning (§ 609.930(c)(3))

One institution stated that ''incident response planning'' as required by proposed § 609.930(c)(3) varies greatly by institution and by incident. The technologies used and available expertise also vary greatly. The commenter stated that broad-based incident responses provide the flexibility needed to adapt to constantly changing technology and threats to technology. The commenter added that requiring specific incident plan responses to individual potential threats is both time consuming and ultimately not satisfactory, especially for new threats that may not be envisioned when the plan is created. The commenter recommended that the final rule be revised to allow institutions more flexibility in defining incident response planning.

We believe that proposed § 609.930(c)(3) included the necessary components and flexibility for an incident response plan. An institution should view an incident response plan as the steps that should be taken when a security incident occurs. Procedures do not need to be specific to any one type of event and can be written to ensure the right people are involved in the incident response and the process remains consistent. Further, we believe incident response plans will likely need to change over time in response to new threats. Thus, we revise this section to include language that the documented cyber risk management program, risk assessments, and incident response plans should be reviewed and updated periodically, but at least annually, to address new threats, concerns, and evolving technology. This is consistent with existing FFIEC, NIST, and FCA guidance.

Detailed Procedures for Security Events (§§ 609.930(c)(3)(i) Through (iii))

Proposed §§ 609.930(c)(3)(i) through (iii) require each institution to document its procedures on forensics, containment, and business resumption. Several commenters stated that the requirements in proposed §§ 609.930(c)(3)(i) through (iii) are not feasible because of the lengthy and numerous ways System institutions identify and contain security events, and later, resume business. The commenters recommended that we revise this section to focus less on specific procedures, and more on an adaptable and scalable framework to assess the nature and scope of an incident, contain the incident, and how to safely resume business activities. Some commenters stated that an institution should act in accordance with state and federal law.

We disagree with the commenters' statements. A System institution must document its procedures for, among other things, ensuring each employee follows the same protocol for forensics, containment, and business resumption. Also, documentation will assist with staff continuity within the institution and can serve as a training tool for institution employees. Furthermore, FCA examiners must be able to examine for compliance. Compliance with only state and federal laws is not appropriate because it does not assess an institution's size, complexity, and risk profile.

We will finalize this section as proposed.

Board Notice of a Cyber Incident (§ 609.930(c)(3)(iv))

One commenter recommended that we modify proposed § 609.930(c)(3)(iv) to permit each institution's board of directors to determine when it should be notified by management of a cyber incident, consistent with the board notification protocols in the institution's approved incident response plan. The commenter suggested revising the proposal to include an incident escalation matrix that would provide the board and management with a clear and specific action plan in the event of a cyber incident and identify when an incident should be brought to the attention of the board and/or other stakeholders (*e.g.,* regulators and law enforcement).

Proposed § 609.930(c)(3)(iv) requires board notice when there is a cyber incident involving unauthorized access to or use of sensitive or confidential customer or employee information.

We believe this section already includes an escalation concept, in that it applies only to sensitive or confidential information. The section does not apply to all information. We believe that when there has been a cyber incident involving sensitive or confidential information, the board must be notified. The board should not be caught off guard when it comes to hearing about cyber incidents.

After further consideration, we now also include a clause that requires notification when there is ''unauthorized access to financial institution information, including proprietary information.'' Financial institution information must also be protected. An institution must guard its institution's reputation in every instance.

Reporting an Incident (§ 609.930(c)(3)(v))

Proposed § 609.930(c)(3)(v) requires an institution to notify FCA as soon as possible, or no later than 36 hours after an institution determines a cyber security incident occurs. A few commenters stated that incidents can occur in an environment without discovery for longer than 36 hours. Additionally, one commenter stated that 36 hours will not allow an institution sufficient time to review evidence and determine whether a reportable incident has occurred. The commenter recommended extending the deadline to 72 hours. Another commenter suggested extending the reporting requirement to four business days after the date of a materiality determination, rather than the date of discovery.

The proposed rule requires ''notifying FCA as soon as possible or no later than 36 hours after the institution determines that an incident has occurred.'' We believe it reasonable that an institution be required to notify its regulator as soon as possible and no later than 36 hours after it identifies such an incident. We do not believe that a materiality standard should be introduced. Notification does not require a detailed report with findings and recommendations. Notification provides us with timely information on a cyber security incident. This is consistent with the other federal financial regulatory agencies' requirement promulgated in a joint regulation that a banking organization notify its primary federal regulator of any significant security incident as soon as possible and no later than 36 hours after it has been determined that a cyber incident has occurred.[6] Thus, we believe the notification requirements of this section are reasonable and remain unchanged.

Former, Current, or Potential Customers (§ 609.930(c)(3)(vi))

Some commenters recommended proposed § 609.930(c)(3)(vi) be amended and revised to provide notice to customers, employees, and website visitors in accordance with state and federal laws. Another commenter was concerned that there was no definition of ''customer,'' especially as it relates to potential customers exploring available loan products online. Another

[6] See. Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Providers, 86 FR. 66,424 (November 23, 2021).

commenter was concerned the section was overly broad and vague. Another commenter recommended deleting this phrase in its entirety.

This section requires institutions to notify former, current, or potential customers and employees, and known visitors to an institution's website, of an incident, when warranted, and in accordance with state and federal laws. For example, notification would be required when sensitive or confidential information has been compromised. The section does not define ''known visitor'' or ''potential customer.'' Overall, the commenters are concerned System institutions will interpret these terms differently.

We do not believe we should change this section as the requirements are consistent with a principles-based rule. Each System institution will determine and document what these terms mean. Providing notice, when warranted, provides flexibility to institutions. Nevertheless, all confidential information related to ''former, current, or potential customers and employees and known visitors to a website'' must be protected. System institutions may not allow others to inappropriately view or access this information without proper authorization. Our regulations at part 618 support this conclusion.

Training (§ 609.930(c)(4))

Proposed § 609.930(c)(4) requires institutions to ''describe the plan to train employees, vendors, contractors, and the institution board to implement the institution's cyber risk program.'' Several commenters argued that the requirement to train contractors and vendors is impractical and that many contractors and vendors will simply refuse to submit to institution-specific training based on their own business requirements.

As a principles-based rule, this section requires an institution to describe its plan to train employees, vendors, and contractors. However, we do not prescribe a particular plan. If an institution does not provide training, the institution must describe its plan and state why and what actions it is taking to mitigate the risk of not having institution-provided training. We require such documentation to enable FCA examiners to review the training plan.

As to vendors, System institutions should be able to confirm, either contractually or otherwise, that vendors have some acceptable level of training, as well as understand sound cyber risk management practices and protocols. We acknowledge that it is unrealistic for an institution to train all contractors and vendors.

We finalize this section as proposed.

Third-Party Vendors (§ 609.930(c)(5))

Several institutions commented generally that they did not own or manage any IT systems that they currently use. They stated that these IT systems may be owned by third-party vendors, technology service providers, or by another System institution, such as a Farm Credit Bank that provides services like a third-party service provider.

As to specific comments, one commenter asked that the term ''vendor'' be clarified. Another commenter stated that proposed § 609.930(c)(5)(i) is impractical as it requires an institution to require its vendors, by contract, to implement appropriate due diligence in selecting vendors. The commenter provided an example of its inability to comply with proposed § 609.930(c)(5)(i) when a vendor may refuse to negotiate its standard terms and conditions, due to its size and bargaining position.

We also received a comment on proposed § 609.930(c)(5)(iii) (now § 609.930(c)(5)(iv)) concerning institutions monitoring and reviewing vendor audits or summaries of test results. The commenter stated that some vendors will not provide these audits or test results. The commenter stated that requiring institutions to negotiate the right to an audit with every vendor will greatly hinder an institution's choice of vendors. Moreover, for many vendors, this is not practical. The commenter added that it is not necessary for an institution to review audits or summaries of test results for a vendor contracted to provide catering or lawn maintenance services, or other non-IT contracts. Another commenter suggested a risk-based approach.

A ''vendor'' is a third party and includes third-party service providers or a System institution providing services to another System institution. A System institution should assess the risk of using a vendor, *i.e.,* complete a vendor risk assessment.[7] Completing a vendor risk assessment helps an institution understand risks when using vendor products or services. An institution cannot delegate its due diligence responsibilities.

Conducting a risk assessment is particularly important when a vendor handles a critical business function, accesses sensitive customer data, and/or interacts with customers. An institution must have controls to ensure that the vendor, even if it is another System institution, has appropriate security in place for IT systems. Whether a vendor is a System service provider or external service provider, an institution should never put its trust in any IT service provider without doing its own due diligence.

An institution has a responsibility to its customers and shareholders. Accordingly, each association must be aware of the risks, even if it outsources its IT services. We will hold the institution accountable for ensuring it has appropriate controls to ensure the continued safety and soundness of the institution. An institution must know its own complexity, including the role of technology service providers. Although services may be outsourced, an institution cannot delegate or shift the requirement for due diligence or accountability from the institution's board and management to service providers. Institutions are required to ensure service providers/vendors are providing adequate and effective services.

Nevertheless, we agree that negotiating the right to audit need not apply to every vendor. Accordingly, to address these concerns we added a new paragraph (iii), requiring institutions to conduct a vendor risk assessment on all vendors.

An institution will be able to assess the level of detail needed for their vendor risk assessment. For example, a vendor risk assessment of a catering vendor may need a statement indicating very little risk because of the nature of the service and type of information provided to the vendor. A vendor risk assessment for IT services would require an institution evaluate cyber risk as part of its vendor management process. A vendor risk assessment helps an institution understand the risks that exist when it uses vendors' products or services. Conducting a vendor risk assessment is particularly important when a vendor handles a critical business function, accesses sensitive customer data, or interacts with customers.

An institution must document the vendor risk assessment and may address whether a large vendor already has appropriate security measures. This way, an institution can determine if it

[7] A vendor risk assessment is the process of identifying and evaluating potential risks or hazards associated with a vendor's operations and products and its potential impact on your organization. When an institution performs a third-party vendor risk assessment, it determines the most likely effects of uncertain events, and then identifies, measures, and prioritizes them. Potential risks include the accuracy and reliability of operational, customer, and financial information; security breaches; operation effectiveness; and legal and regulatory compliance.

will accept, mitigate, transfer, or avoid the risk. It is possible that a vendor risk assessment could address the reputation of a vendor and conclude that there is a low risk.

Just because a smaller or less complex institution may rely on its funding bank for technology services does not mean that institution would not be required to have a cyber risk management program. If a cyber event occurred at a small or less complex institution that relies on the bank for services, we would still expect the institution to work with the bank to follow a cyber security framework (*e.g.,* identify, protect, detect, respond, and recover).

Additionally, to be more consistent with a principles-based approach, we revise proposed § 609.930(c)(4)(iii) (now § 609.930(c)(4)(iv)) to identify what an institution may monitor, rather than prescribing what an institution must monitor. This would provide an option for the institution to receive some type of report, audit, or summary. The institution must exercise appropriate due diligence in selecting any vendor. Any such assessment must include appropriate documentation for examiner review.

Internal Controls Frequency (§ 609.930(c)(6)(i))

A few commenters stated that proposed § 609.930(c)(6)(i), which requires an institution to determine the frequency and nature of internal controls testing, provides no substantive guidance on the frequency and nature of internal controls testing. No recommendation was provided.

As this is a principles-based rule, we provide institutions the autonomy to decide the frequency and nature of their internal control tests. Based on the risk assessment, each institution should decide the frequency and nature of internal control tests. If we were to mandate every element, this rule would no longer be principles-based, as appropriate, but a prescriptive rule. The type and amount of risk an institution faces should determine the nature and frequency of testing. An institution may want to consult the FFIEC IT Handbook, NIST, and FCA guidance documents.

We finalize this section as proposed.

Independent Third-Party Testing (§ 609.930(c)(6)(ii))

A commenter stated that proposed § 609.930(c)(6)(ii) requires an independent party to perform testing but does not address the size and complexity of the institutions when performing testing. The commenter asserted that, to minimize examination inconsistencies, the rule should address the unique service provider relationship and structure between some System entities.

We disagree. The regulation provides that an independent party can include institution staff who are independent of the cyber risk management program. This will allow an institution, regardless of size, risk profile, or complexity, to conduct its own testing and due diligence, which the institution should document. Institution documentation will promote consistency in the examination process.

Reasonable Assurances and Material Deficiencies (§ 609.930(c)(6)(iii))

Several commenters stated that there is no indication how to measure the term ''material.'' One commenter added that ''reasonable assurances'' seem to refer to an auditor's degree of satisfaction that the evidence obtained during the audit supports the assertions in the financial statements. The commenter added ''reasonable assurances'' do not include ''remediation'' in the definition, as a situation with material deficiencies (situations requiring remediation) would not allow an auditor to arrive at a level of reasonable assurances. The commenter suggested separating this section into a testing element and a remediation element. The commenter stated that a testing element related to ''reasonable assurances'' would assess the cyber capabilities of the organization to detect and prevent cyber incidents of a material nature, while a remediation element related to incident responses would assess the effectiveness of timely remediation of cyber incidents that have a material impact on the entity.

Proposed § 609.930(c)(6)(iii) indicates that ''internal systems and controls must provide reasonable assurances that System institutions will prevent, detect, and remediate material deficiencies on a timely basis.''

''Material'' in this context means to exclude small or *de minimis* deficiencies. Thus, System institutions may interpret ''material'' to mean anything that could potentially impact the safety and soundness of an institution or the accuracy of financial reporting. Internal controls should provide reasonable assurances that information and IT is reliable, accurate, and timely.

Internal controls are intended to prevent errors and irregularities, identify problems, and ensure corrective action. Internal controls can be expected to provide only reasonable, not absolute, assurances to an institution's management and board.

We continue to believe internal controls must provide reasonable assurances to prevent, detect, and remediate material deficiencies. We do not believe any change to the proposal is necessary. The regulation, as proposed, is clear on the need for adequate internal controls.

Privacy Framework (§ 609.930(d))

With respect to proposed § 609.930(d), commenters were concerned that this section does not provide expectations on the privacy framework, or other legal or compliance requirements. This section requires, in part, that an institution ''consider privacy and other legal compliance issues.''

We have decided not to specify a uniform privacy framework. Privacy frameworks can vary from state-to-state and from institution-to-institution. System institutions may consult the privacy framework established by NIST at *https://www.nist.gov/privacy-framework/privacy-framework.*

We finalize this section as proposed.

Reporting to the Board (§ 609.930(e))

As proposed, § 609.930(e) requires an institution to ''report quarterly to its board or an appropriate committee.'' One commenter suggested that quarterly reporting may not be the correct frequency to report to an institution's Board.

We concur with the suggestion that quarterly reporting may not be the correct reporting frequency. We revise this section to provide, ''[a]t a minimum, each institution must report quarterly to its board or an appropriate committee of the board.'' This will ensure that there is at least quarterly reporting to the board. Depending on the risk or information that must be communicated to the board, the frequency of reporting may need to increase, and conversely, a quarterly report to the board may be brief, as appropriate and in accordance with the institution's situation. The institution should have appropriate documentation to support the frequency of board reporting.

Cyber Risk Management Metrics (§ 609.930(e))

Section 609.930(e), as proposed, requires the report to the board to ''contain material matters and metrics related to the institution's cyber risk management program, including specific risks and threats.'' One commenter was concerned that the section does not provide a framework or expectation for the metrics presented to the board, or consider institutions

providing cyber metrics through another avenue, such as an entity-wide risk management report. The commenter believed that their concerns could lead to inconsistencies and misaligned expectations between examiners and institutions. The commenter suggested the rule should refer System institutions to modern frameworks based on industry standards, customized for its institution's risk environment, and aligned with its documented risk-based approach.

Upon further review, we delete the phrase ''and metrics'' from the final rule, but we decline to reference modern frameworks based on industry standards. Removing ''metrics'' should alleviate confusion from the proposed language. We continue to believe management should timely report on cyber risk management practices to the board or a committee of the board.

Technology Budget (§ 609.935(b))

One commenter stated that requiring an institution, per proposed § 609.935(b), to detail the technology budget in the technology plan could lead to unnecessary duplication. Some institutions present their technology budget to their boards with the overall operating expense budget. Another commenter objected to the requirement on how and when the information is to be presented.

We are not revising the proposed language. We believe there is little to no burden for institutions to include the technology budgets in the overall operating expense budgets, even if duplicative to other reports the boards might receive. Having a separate technology budget could benefit the board of directors by identifying the expenses incurred within the technology area. A separate technology budget is especially important as money spent in the technology area helps keep systems secure and adds more transparency to the technology area. Business planning is very important as institutions identify specific areas that should be reviewed, assessed, and evaluated. Board and management can use the technology budget to initiate discussions on spending for cyber risk management.

Identify and Assess Business Risk (§ 609.935(c))

One commenter stated proposed § 609.935(c) is unclear. Proposed § 609.935(c) requires institutions to identify and assess the business risk of proposed technology changes and assess the adequacy of the institution's cyber risk program. The commenter did not know whether the requirement in proposed § 609.935(c) is intended to assess the adequacy of the program as a whole or solely assess the proposed technology changes. No recommendation was provided.

To alleviate any confusion, we modify this section, so that the plan ''[i]dentifies and assesses the adequacy of the institution's entire cyber risk management program, including proposed technology changes.''

Records Retention (§ 609.945)

Several commenters stated that the proposed rule does not provide guidance on maintaining electronic records. Proposed § 609.945 requires ''records stored electronically must be accurate, accessible, and reproducible for later reference.'' The commenters stated that this section is silent on the scope and extent of the records and does not consider the institutions' data retention policies. The commenters recommended that we revise the rule to refer System institutions to modern frameworks based on industry standards, which would be customized for the institution's risk environment when defining the scope and extent of its electronic records retention program.

We are not revising the proposed language. This is the same language from the prior regulation on E–SIGN. This section will continue to hold institutions accountable for records retention in general. Institutions are still required to comply with E–SIGN, which is a statutory provision. Our existing E–SIGN regulations were educational and a reminder to institutions of their applicability.

As this is not a prescriptive rule, we have decided not to impose specific records retention schedules here. System institutions must continue to maintain their records to document their business decisions and to allow examiners to review such documents. Moreover, System institutions must have records retention programs that comply with their respective state and federal laws.

IV. Regulatory Analysis

A. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the Cyber Risk Management final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the FCS, considered together with its affiliated associations, has assets and annual income more than the amounts that would qualify them as small entities. Therefore, FCS institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

Under the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this final rule is not a ''major rule'' as the term is defined at 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 609

Agriculture, Banks, Banking, Electronic commerce, Reporting and recordkeeping requirements, Rural areas.

■ For the reasons stated in the preamble, revise part 609 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 609—CYBER RISK MANAGEMENT

Subpart A—General Rules

Subpart B—Standards for Boards and Management

Authority: Sec. 5.9 of the Farm Credit Act (12 U.S.C. 2243); 5 U.S.C. 301; Pub. L. 106–229 (114 Stat. 464).

Subpart A—General Rules

§ 609.905 In general.

Farm Credit System (System) institutions must engage in appropriate risk management practices to ensure safety and soundness of their operations. A System institution's board and management must maintain and document effective policies, procedures, and controls to mitigate cyber risks. This includes establishing an appropriate vulnerability management program to monitor cyber threats, mitigate any known vulnerabilities, and establish appropriate reporting mechanisms to the institution's board and the Farm Credit Administration (FCA). The vulnerability management programs should be commensurate with the size, risk profile, and complexity of the institution and based on sound industry standards and practices.

Subpart B—Standards for Boards and Management

§ 609.930 Cyber risk management.

(a) *Cyber risk management program.* Each System institution must implement a comprehensive, written cyber risk management program consistent with the size, risk profile,

and complexity of the institution's operations. The program must ensure controls exist to protect the security and confidentiality of current, former, and potential customer and employee information, protect against reasonably anticipated cyber threats or hazards to the security or integrity of such information, and protect against unauthorized access to or use of such information.

(b) *Role of the board.* Each year, the board of directors of each System institution or an appropriate committee of the board must:

(1) Approve a written cyber risk program. The program must be consistent with industry standards to ensure the institution's safety and soundness and compliance with law and regulations;

(2) Oversee the development, implementation, and maintenance of the institution's cyber risk program; and

(3) Determine necessary expertise for executing the cyber risk management plan and, where practical, delegate day-to-day responsibilities to management and employees.

(c) *Cyber risk program.* Each institution's cyber risk program must, at a minimum:

(1) Include an annual risk assessment of the internal and external factors likely to affect the institution. The risk assessment, at a minimum, must:

(i) Identify and assess internal and external factors that could result in unauthorized disclosure, misuse, alteration, or destruction of current, former, and potential customer and employee information or information systems; and

(ii) Assess the sufficiency of policies, procedures, internal controls, and other practices in place to mitigate risks.

(2) Identify systems and software vulnerabilities, prioritize the vulnerabilities and the affected systems based on risk, and perform timely remediation. The particular security measures an institution adopts will depend upon the size, risk profile, and complexity of the institution's operations and activities.

(3) Maintain an incident response plan that contains procedures the institution must implement when it suspects or detects unauthorized access to current, former, or potential customer, employee, or other sensitive or confidential information. An institution's incident response plan must be reviewed and updated periodically, but at least annually, to address new threats, concerns, and evolving technology. The incident response plan must contain procedures for:

(i) Assessing the nature and scope of an incident, and identifying what information systems and types of information have been accessed or misused;

(ii) Acting to contain the incident while preserving records and other evidence;

(iii) Resuming business activities during intrusion response;

(iv) Notifying the institution's board of directors when the institution learns of an incident involving unauthorized access to or use of sensitive or confidential customer, and/or employee information, or unauthorized access to financial institution information including proprietary information;

(v) Notifying FCA as soon as possible or no later than 36 hours after the institution determines that an incident has occurred; and

(vi) Notifying former, current, or potential customers and employees and known visitors to your website of an incident when warranted, and in accordance with state and federal laws.

(4) Describe the plan to train employees, vendors, contractors, and the institution board to implement the institution's cyber risk program.

(5) Include policies for vendor management and oversight. Each institution, at a minimum, must:

(i) Exercise appropriate due diligence in selecting vendors;

(ii) Negotiate contract provisions, when feasible, that facilitate effective risk management and oversight and specify the expectations and obligations of both parties;

(iii) Conduct a vendor risk assessment on all vendors; and

(iv) Monitor its IT and cyber risk management related vendors to ensure they have satisfied agreed upon expectations and deliverables. Monitoring may include reviewing audits, summaries of test results, or other equivalent evaluations of its vendors.

(6) Maintain robust internal controls by regularly testing the key controls, systems, and procedures of the cyber risk management program.

(i) The frequency and nature of such tests are to be determined by the institution's risk assessment.

(ii) Tests must be conducted or reviewed by independent third parties or staff independent of those who develop or maintain the cyber risk management program.

(iii) Internal systems and controls must provide reasonable assurances that System institutions will prevent, detect, and remediate material deficiencies on a timely basis.

(d) *Privacy.* Institutions must consider privacy and other legal compliance issues, including but not limited to, the privacy and security of System institution information; current, former, and potential borrower information; and employee information, as well as compliance with statutory requirements for the use of electronic media.

(e) *Board reporting requirements.* At a minimum, each institution must report quarterly to its board or an appropriate committee of the board. The report must contain material matters related to the institution's cyber risk management program, including specific risks and threats.

§ 609.935 Business planning.

The annually approved business plan required under subpart J of part 618 of this chapter, and § 652.60 of this chapter for System institutions and the Federal Agricultural Mortgage Corporation, respectively, must include a technology plan that, at a minimum:

(a) Describes the institution's intended technology goals, performance measures, and objectives;

(b) Details the technology budget;

(c) Identifies and assesses the adequacy of the institution's entire cyber risk management program, including proposed technology changes;

(d) Describes how the institution's technology and security support the current and planned business operations; and

(e) Reviews internal and external technology factors likely to affect the institution during the planning period.

§ 609.945 Records retention.

Records stored electronically must be accurate, accessible, and reproducible for later reference.

Dated: December 6, 2023.

Ashley Waldron,

Secretary, Farm Credit Administration.

[FR Doc. 2023–27102 Filed 12–8–23; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1816; Project Identifier MCAI–2021–01460–R; Amendment 39–22599; AD 2023–22–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 D–3 helicopters. This AD was prompted by recalculations of the inspection intervals for certain parts. This AD requires revising the airworthiness limitations section (ALS) of the existing helicopter maintenance manual or instructions for continued airworthiness for your helicopter and the existing approved maintenance or inspection program for your helicopter, as applicable, to reduce the inspection interval of certain parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 16, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 16, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1816; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material that is incorporated by reference in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *easa.europa.eu*. You may find the EASA material on the EASA website at *ad.easa.europa.eu*.
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1816.

Other Related Service Information: For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/en/products-services/helicopters/hcare-services/airbusworld*. You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (303) 342–1080; email *william.mccully@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0290, dated December 23, 2021; corrected December 23, 2021 (EASA AD 2021–0290), to correct an unsafe condition for all serial-numbered Airbus Helicopters Deutschland GmbH Model MBB–BK117 D–3 and D–3m helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 D–3 helicopters. The NPRM published in the **Federal Register** on September 7, 2023 (88 FR 61485). The NPRM was prompted by recalculations of the inspection intervals for certain parts. The NPRM proposed to require accomplishing the actions specified in EASA AD 2021–0290, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the EASA AD. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the EASA AD in the AD docket at *regulations.gov* under Docket No. FAA–2023–1816.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0290 requires replacing components before exceeding their life limits and accomplishing maintenance tasks within thresholds and intervals specified in the applicable ALS. Depending on the results of the maintenance tasks, EASA AD 2021–0290 requires accomplishing corrective action(s) or contacting AHD [Airbus Helicopters Deutschland GmbH] for approved instructions and accomplishing those instructions. EASA AD 2021–0290 also requires revising the Aircraft Maintenance Programme (AMP) by incorporating the limitations, tasks, and associated thresholds and intervals described in the specified ALS as applicable to helicopter model and configuration. Revising the AMP constitutes terminating action for the requirements to replace components before exceeding their life limits and accomplish maintenance tasks within thresholds and intervals specified in the applicable ALS as required by EASA AD 2021–0290.

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

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin ASB MBB–BK117 D–3–04A–001, Revision 0, dated December 22, 2021. This service information specifies checking the total accumulated flight hours since new for bolt part number (P/N) D671M7501201, bolt P/N D671M7501211, and mast bolt P/N D620M0501203, and accomplishing the airworthiness inspection within the reduced airworthiness inspection interval of 400 flight hours.

The FAA also reviewed Airbus MBB–BK117 D–3 Chapter 04, ALS, Revision 1, dated December 14, 2021. This service information specifies airworthiness limitations, tasks, and associated thresholds and intervals for various parts. Revision 1 of this service information specifies various updates for certain components.

Differences Between This AD and the EASA AD

EASA AD 2021–0290 applies to Model MBB–BK117 D–3m helicopters, whereas this AD does not because that model is not FAA type-certificated.

EASA AD 2021–0290 requires replacing certain components before exceeding applicable life limits, accomplishing certain maintenance tasks within thresholds and intervals as

specified in the ALS, as defined within, and depending on the results, accomplishing corrective action within the compliance time specified in that ALS. EASA AD 2021–0290 also requires revising the approved AMP to incorporate the limitations, tasks, and associated thresholds and intervals described in that ALS within 12 months after its effective date. Whereas, this AD requires revising existing documents and programs within 30 days to incorporate the limitations, tasks, and associated thresholds and intervals described in that ALS, and clarifies that if an incorporated limitation or threshold therein is reached before 30 days after the effective date of this final rule, you still have up to 30 days after the effective date of this final rule to accomplish the corresponding task.

Costs of Compliance

The FAA estimates that this AD affects 29 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Revising the ALS of the existing helicopter maintenance manual or instructions for continued airworthiness for your helicopter and the existing approved maintenance or inspection program for your helicopter, as applicable, will take about 2 work-hours for an estimated cost of $170 per helicopter and $4,930 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–22–15: Airbus Helicopters Deutschland GmbH (AHD): Amendment 39–22599; Docket No. FAA–2023–1816; Project Identifier MCAI–2021–01460–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 16, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 D–3 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6710, Main Rotor Control.

(e) Unsafe Condition

This AD was prompted by recalculations of the inspection intervals for certain parts. The FAA is issuing this AD to reduce the inspection intervals for certain parts. The unsafe condition, if not addressed, could result in failure of a part and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0290, dated December 23, 2021; corrected December 23, 2021 (EASA AD 2021–0290).

(h) Exceptions to EASA AD 2021–0290

(1) Where EASA AD 2021–0290 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the requirements specified in paragraphs (1), (2), (4), and (5) of EASA AD 2021–0290.

(3) Where paragraph (3) of EASA AD 2021–0290 specifies revising ''the approved AMP'' within 12 months after its effective date, this AD requires revising the airworthiness limitations section of your existing helicopter maintenance manual or instructions for continued airworthiness and your existing approved maintenance or inspection program, as applicable, within 30 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0290 is on or before the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0290, or within 30 days after the effective date of this AD, whichever occurs later.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2021–0290.

(i) Provisions for Alternative Actions and Intervals

After the airworthiness limitations section of the existing helicopter maintenance manual or instructions for continued airworthiness; and the existing approved maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0290.

(j) Special Flight Permit

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*.

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

(l) Related Information

For more information about this AD, contact Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (303) 342–1080; email *william.mccully@faa.gov*.

(m) 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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2021–0290, dated December 23, 2021; corrected December 23, 2021 (EASA AD 2021–0290).

(ii) [Reserved]

(3) For EASA AD 2021–0290, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu*. You may find the EASA material on the EASA website at *ad.easa.europa.eu*.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on November 30, 2023.

Victor Wicklund,

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

[FR Doc. 2023–27111 Filed 12–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1216; Project Identifier AD–2023–00502–E; Amendment 39–22614; AD 2023–23–12]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all CFM International, S.A. (CFM) Model LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 (LEAP–1B) engines. This AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) rotor stage 1 disks (HPT stage 1 disks) and a certain compressor rotor stages 6–10 spool were manufactured from material suspected to have reduced material properties due to iron inclusion. This AD requires replacing certain HPT stage 1 disks and a certain compressor rotor stages 6–10 spool. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 16, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 16, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1216; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact CFM International, S.A., GE Aviation Fleet Support, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45215; phone: (877) 432–3272; email: *aviation.fleetsupport@ge.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1216.

FOR FURTHER INFORMATION CONTACT: Mehdi Lamnyi, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7743; email: *Mehdi.Lamnyi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to CFM International, S.A. (CFM) Model LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 engines. The NPRM published in the **Federal Register** on July 24, 2023 (88 FR 47404). The NPRM was prompted by a manufacturer investigation that detected iron inclusion in three non-LEAP–1B HPT rotor disks. Further investigation determined that the iron inclusion is attributed to deficiencies in the manufacturing process. The manufacturer also determined that certain LEAP–1B HPT stage 1 disks and a certain compressor rotor stages 6–10 spool manufactured using the same process may have reduced material properties and a lower fatigue life capability due to iron inclusion, which may cause premature fracture and subsequent uncontained failure of certain HPT stage 1 disks and a certain compressor rotor stages 6–10 spool.

In the NPRM, the FAA proposed to require replacement of certain HPT stage 1 disks and a certain compressor rotor stages 6–10 spool and also prohibit installation of an HPT stage 1 disk or compressor rotor stages 6–10 spool that has a part number and serial number identified in the service information onto any engine. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

The FAA received comments from five commenters. Commenters included CFM International, United Air Lines (United), The Boeing Company (Boeing), Air Line Pilots Association, International (ALPA) and Lynx Air (Lynx). United, Boeing, and ALPA supported the NPRM without change. The following presents the comments received on the NPRM from CFM and Lynx and the FAA's response to each comment.

Request To Update Service Information

CFM advised that updated service information for replacement of the HPT Stage 1 disks and high-pressure compressor (HPC) Stage 6–10 spool has been published. This updated service information provides certain corrections, identifies Required by Compliance annotations, and updated cost information to adequately address this unsafe condition. CFM recommends the latest revision to be utilized in this final rule.

The FAA agrees with CFM's recommendation to utilize the updated

service information and has updated this final rule to reflect the service information that is to be incorporated by reference in this final rule.

Request To Issue Separate AD Actions

Lynx stated that the reference of HPC Stage 6–10 spool should be removed from the manufacturer service information; and additional removal instruction should be provided to address the unsafe condition as it pertains to this affected part. Lynx pointed out that issuing a single AD addressing HPC Stage 6–10 spools and HPT Stage 1 disks, could cause a certain level of uncertainty when maintaining maintenance records and incorporating these applicable engines into the operator's maintenance programs. Lynx suggested separate ADs should be issued to minimize the risk of confusion as it pertains to ensuring this unsafe condition has been addressed on these engines.

The FAA disagrees with the request to require the manufacturer to revise their service information and issue separate ADs for each affected part. Since the applicability, unsafe condition, required action, and corrective action, are consistent among the affected parts and the FAA has determined that the content of the service bulletin addresses the unsafe condition, there is no need for separate service bulletins or separate ADs.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for any changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed CFM Service Bulletin LEAP–1B–72–00–0392–01A–930A–D, Issue 002, dated September 5, 2023. This service information identifies the part numbers and serial numbers of HPT stage 1 disks and a compressor rotor stages 6–10 spool with potentially reduced material properties and specifies procedures for replacement of these parts. 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** section.

Costs of Compliance

The FAA estimates that this AD affects 39 engines installed on airplanes of U.S. registry. These 39 engines require replacement of the HPT stage 1 disk. The FAA estimates that there are no engines installed on airplanes of U.S. registry that require replacement of the compressor rotor stages 6–10 spool.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPT stage 1 disk	8 work-hours × $85 per hour = $680	$215,635 (pro-rated)	$216,315	$8,436,285
Replace compressor rotor stages 6–10 spool.	8 work-hours × $85 per hour = $680	$37,660 (pro-rated)	38,340	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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–23–12 CFM International, S.A.: Amendment 39–22614; Docket No. FAA–2023–1216; Project Identifier AD–2023–00502–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 16, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. (CFM) Model LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section; 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a manufacturer investigation that revealed that certain high-pressure turbine (HPT) rotor stage 1 disks (HPT stage 1 disks) and a certain compressor rotor stages 6–10 spool were manufactured from material suspected to have reduced material properties due to iron inclusion. The FAA is issuing this AD to prevent fracture and subsequent uncontained failure of certain HPT stage 1 disks and a certain compressor rotor stages 6–10 spool. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) For engines with an installed HPT stage 1 disk having a part number (P/N) and serial number (S/N) identified in Compliance, paragraph 3.E., Tables 1 through 2, of CFM Service Bulletin (SB) LEAP–1B–72–00–0392–01A–930A–D, Issue 002, dated September 5, 2023 (CFM SB LEAP–1B–72–00–0392–01A–930A–D, Issue 2): At the next piece-part exposure of the HPT stage 1 disk, or before exceeding the applicable cycles since new (CSN) threshold identified in Compliance, paragraph 3.E., Tables 1 through 2, of CFM SB LEAP–1B–72–00–0392–01A–930A–D, Issue 2, whichever occurs first after the effective date of this AD; or if the applicable CSN threshold has been exceeded as of the effective date of this AD, within 50 flight cycles (FCs) from the effective date of this AD; remove the HPT stage 1 disk from service and replace with a part eligible for installation.

(2) For engines with an installed compressor rotor stages 6–10 spool having a P/N and S/N identified in Compliance, paragraph 3.E., Table 3, of CFM SB LEAP–1B–72–00–0392–01A–930A–D, Issue 2: At the next piece-part exposure of the compressor rotor stages 6–10 spool, or before exceeding the applicable CSN threshold identified in Compliance, paragraph 3.E., Table 3, of CFM SB LEAP–1B–72–00–0392–01A–930A–D, Issue 2, whichever occurs first after the effective date of this AD; or if the applicable CSN threshold has been exceeded as of the effective date of this AD, within 50 FCs from the effective date of this AD; remove the compressor rotor stages 6–10 spool from service and replace with a part eligible for installation.

(h) Definition

For the purpose of this AD, a ''part eligible for installation'' is an HPT stage 1 disk or compressor rotor stages 6–10 spool that does not have a P/N and S/N identified in Compliance, paragraph 3.E., Tables 1 through 3 of CFM SB LEAP–1B–72–00–0392–01A–930A–D, Issue 2.

(i) Installation Prohibition

After the effective date of this AD, do not install an HPT stage 1 disk or compressor rotor stages 6–10 spool that has a P/N and S/N identified in Compliance, paragraph 3.E., Tables 1 through 3 of CFM SB LEAP–1B–72–00–0392–01A–930A–D, Issue 2 on any engine.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed prior to the effective date of this AD by following the Accomplishment Instructions specified in CFM SB LEAP–1B–72–00–0392–01A–930A–D, Issue 001, dated March 7, 2023.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

(1) For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7743; email: *mehdi.lamnyi@faa.gov*.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (4) of this AD.

(m) 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) CFM International, S.A. Service Bulletin LEAP–1B–72–00–0392–01A–930A–D, Issue 002, dated September 5, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact CFM International, S.A., GE Aviation Fleet Support, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45215; phone: (877) 432–3272; email: *aviation.fleetsupport@ge.com*.

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

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

Issued on November 20, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–27092 Filed 12–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[SATS No. VA–127–FOR; Docket ID: OSM–2015–0003; S1D1S SS08011000 SX064A000 223S180110; S2D2S SS08011000 SX064A000 22XS501520]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment with deferrals.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving, with two deferrals, an amendment to the Virginia regulatory program (the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). This amendment includes revisions to Virginia's statutes and/or coal mining regulations that: remove self-bonds from the types of performance bond instruments authorized; adjust the financing of its alternative bonding system (ABS), which is in the form of a bond pool; and revise proof of publication requirements involving permit applications and bond release applications. We are deferring our decision on the removal of a regulation requiring certain actions by self-bonded operators when a condition affects their financial status and the proposed monetary cap on Virginia's pool bond fund.

DATES: The effective date is January 10, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Castle, Acting Field Office Director, Charleston Field Office. Telephone: (859) 260–3900, Email: *osm-chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

VI. Statutory and Executive Order Reviews

I. Background on the Virginia Program

A. Background—General: Subject to OSMRE's oversight, section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15. With this amendment, Virginia is requesting changes to the bonding program we previously approved as described below.

B. Background—Virginia's Bonding Program: SMCRA section 509, *Performance Bonds,* 30 U.S.C. 1259, and the Federal regulations at 30 CFR part 800, *Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations under Regulatory Programs,* prescribe the minimum bonding requirements for filing and maintaining bonds and insurance for coal mining and reclamation operations under regulatory programs. We approved Virginia's initial bonding provisions under its regulatory program on September 21, 1982 (47 FR 41557). We have approved other revisions to Virginia's bonding program, including those published on January 18, 1983 (48 FR 2123), February 28, 1983 (48 FR 8271), December 27, 1983 (48 FR 56949), December 31, 1987 (52 FR 49403), February 2, 1990 (55 FR 3588), August 5, 1991 (56 FR 37153), and May 29, 2012 (77 FR 31486).

Virginia's bonding program is authorized under Title 45.1 of the Code of Virginia, Chapter 19, *Virginia Coal Surface Mining Control and Reclamation Act of 1979* (VACSMCRA), Article 2, *Regulation of Mining Activity,* and Article 5, *Coal Surface Mining Reclamation Fund,* and implemented through its regulations at Title 4, *Conservation and Natural Resources,* of the Virginia Administrative Code. Virginia's bonding program includes provisions involving self-bonds and an alternative bonding system in the form of a bond pool, both subjects of this document, as summarized below.

1. Virginia's Bonding Program Options: Virginia's program includes two options for permittees to post a performance bond:

a. *Full-Cost Bond:* If a permittee elects not to participate in the bond pool or does not qualify to become a participant in the pool, the permittee is required to submit an adequate full-cost bond for each bonded area covering the *entire* (full) cost of reclamation for coal mining operations. The various types of performance bonds permitted by Virginia to satisfy full-cost bond requirements include: surety bonds; collateral bonds (including certificates of deposit and letters-of-credit); escrow accounts; combined surety/escrow accounts; a combination of these bonding methods; and self-bonds, which Virginia has stopped accepting in anticipation of our approval of this amendment. The amount is dependent upon the reclamation requirements of the approved permit and associated reclamation plan cost estimate. In no case may the total bond initially posted for the entire area under one permit be less than $10,000.

b. *Alternative Bonding System (ABS):* In lieu of requiring each permittee to submit permit-specific full-cost performance bonds for every coal mining operation, Virginia has an ABS in the form of a bond pool. (In Virginia this is referred to as the Pool Bond Fund, but to maintain consistency with our nomenclature in State Program Amendments and other OSMRE literature, we will refer to it as the ''bond pool'' or ''bond pool fund'' unless we are specifically referencing the text of Virginia statutes or regulations.) The ABS is designed to provide funding, if necessary, to carry out reclamation plan requirements in the event of forfeiture. Participation in the ABS is voluntary and requires an operator to submit an application to participate. Acceptance into the bond pool is based on the applicant's financial standing and reclamation record. Other restrictions apply, including those involving a review of ownership, control, and violation history.

Further, in order to participate in the ABS, an operator must post an underlying financial security in the form of a performance bond. The performance bond can be in the form of any bond type approved by Virginia. The amount of the underlying financial security is determined by the greater of either a per-acre sum or a stated minimum, but is not tied to the estimated cost of reclamation. This underlying financial security results in a bond calculation that is less than the amount required under a full-cost bond, which considers the estimated cost of reclamation in its calculation.

Various sources of funding make up the bond pool fund account (an interest-bearing account referred to as the Coal Surface Mining Reclamation Fund or the ''Fund''), which is used to supplement the underlying financial security. These sources include entrance fees, a reclamation tax based upon coal production, special assessments, interest, and civil penalty collections. Before 2014, the reclamation tax was collected from Fund participants commencing with and running from the date of the coal production, processing, or loading from those operations under a permit for a period of one year. When the quarterly Fund balance (including interest earned) was less than $1.75 million, participants paid the following amounts on a quarterly basis into the Fund according to the type of permit: $0.04/ton of coal extracted/produced for surface mining; $0.03/ton for deep mining; and $0.015/ton for preparation or loading facilities. When any quarterly Fund balance was greater than $2 million, payments would cease until any quarterly Fund balance was less than $1.75 million. The Fund is used for the following purposes only: (1) reclaiming permit areas covered by the Fund in the event of bond forfeiture (after the underlying financial security is used); and (2) covering administrative costs of the Fund. The Fund is administered by the Virginia Department of Mines, Minerals and Energy (DMME), now known as the Virginia Department of Energy (*see* section II, *Submission of the Amendment,* indicating that we will continue to refer to DMME for the purpose of this amendment to maintain consistency with the provisions Virginia submitted). As of August 31, 2021, the Fund had a balance of approximately $10,688,000.

Virginia's Reclamation Fund Advisory Board (RFAB), previously known as the Pool Bond Fund Advisory Committee (PBFAC), consists of five members and is responsible for formulating recommendations to Virginia's Director of the DMME (the Director) concerning oversight of the general operation of the Fund. The RFAB reports biannually to the Director and to the Governor on the status of the Fund and makes recommendations to the Director involving regulations or changes for the administration or operation of the Fund.

The Director has the discretion to adopt the recommendations of the RFAB through regulatory action.

2. Self-Bond: Before 2014, Virginia's program accepted self-bonds (a bond without separate surety) as the financial security for full-cost bonds and bonds under the bond pool. In 2014, through legislative action, Virginia ceased accepting self-bonds as an acceptable form of bond for new permits and new increments as discussed in section II of this document. As of August 31, 2021, there are 20 permits with some form of self-bonding, with 19 of these permits using self-bonds to meet the minimum bonding required to participate in the bond pool. These 19 permits use self-bonds to cover reclamation costs before the Fund would need to provide additional funding for reclamation efforts. These self-bonds are held by one operator/permittee.

3. Virginia Action following OSMRE Review of the Virginia Bonding Program: In response to our January 22, 2011, report summarizing our review of Virginia's full-cost bonding program (Administrative Record No. VA 2037), Virginia sent us a letter dated February 10, 2011 (Administrative Record No. VA 2038), announcing its plans to initiate a risk assessment review of its ABS that would be conducted by a neutral third party. Virginia procured actuarial services from Pinnacle Actuarial Resources, and the company submitted its final report to Virginia on May 29, 2012 (Pinnacle Report), recommending changes to the ABS to keep it financially sound (Administrative Record No. VA 2022).

C. Background—Proof of Publication: As part of our oversight role, we reviewed Virginia's permitting process for permit renewal applications and, in a September 2014 report entitled *Processing of Permit Renewal Applications,* noted that following the required public advertisement that an application had been submitted, proof that those advertisements had been published either were not being submitted or were not being made part of the application package within four weeks after the last date of publication, as required by Virginia's regulations. We recommended Virginia consider revising its regulations so that Virginia's electronic permitting process does not violate Virginia's approved program (Administrative Record No. VA 2044).

II. Submission of the Amendment

Following the 2012 actuarial review of the ABS and to improve the operation of the ABS, in March 2014, Virginia enacted Senate Bill 560 (S.B. 560) and House Bill 710 (H.B. 710) to amend certain provisions of the VACSMCRA. *See* 2014 Va. Acts chs. 111, 135. The enactment of this legislation effected the following changes to VACSMCRA: (1) it removed an applicant's ability to submit its own bond without separate surety, thereby removing the self-bonding option; and (2) it revised the ABS by changing the parameters of entrance fees and reclamation tax payments. Virginia now seeks to amend its program to reflect these changes to VACSMCRA, as codified through revised statutes in Title 45.1, Chapter 19 of the Code of Virginia (Virginia Code or Va. Code) and changes to its implementing regulations at Title 4, Agency 25, Chapter 130 of the Virginia Administrative Code (VAC).

By letter dated June 12, 2015, Virginia sent us an amendment to its program under SMCRA (Administrative Record No. VA 2024). With this amendment, Virginia seeks to revise Va. Code 45.1–241, 45.1–270.3, and 45.1–270.4, as amended by 2014 Va. Acts chs. 111, 135 (Administrative Record No. VA 2021). Virginia also seeks to revise its administrative regulations at Title 4 of the VAC that involve the option to self-bond and the ABS fees and taxes.

In addition to the revisions to Virginia's bonding program, Virginia also seeks to revise its permitting regulations by modifying its procedures related to the submission of proof that public notice had been published in a newspaper of general circulation for permit applications and bond release applications. Virginia also proposed certain non-substantive editorial statutory and regulatory revisions that involve clarification of syntax, renumbering of paragraphs, and reference changes, but do not change the administrative regulations substantively. The full text of the program amendment is available at *www.regulations.gov,* searchable by the Docket ID Number referenced at the top of this document.

We announced receipt of the proposed amendment in the October 22, 2015, **Federal Register** (80 FR 63933) (Administrative Record No. VA 2026). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period ended on November 23, 2015. On November 17, 2015, we received a letter from an organization requesting an extension to the public comment period (Administrative Record No. 2027). We granted that request in a letter dated November 20, 2015 (Administrative Record No. VA 2028), reopened the public comment period, and announced the extension in the February 8, 2016, **Federal Register** (81 FR 6479) (Administrative Record No. VA 2029). The public comment period ended on March 9, 2016. No request for public hearing was received. Public comments that were received are addressed in the Public Comments section of this document.

In a letter dated October 24, 2016, Virginia clarified that while the submission included a revision that removed escrow bonds from its approved list of types of acceptable performance bond at 4 VAC 25–130–800.23, it was not their intent to do so. (Administrative Record No. VA 2040). Therefore, escrow bonds are not being addressed in this document.

In a letter dated April 24, 2017, Virginia notified us of a change affecting its initial submission (Administrative Record No. VA 2041). The original submission included changes to the reclamation tax payments under Va. Code 45.1–270.4, *Assessment of Reclamation Tax Revenues for Fund,* which were initially set to expire on July 1, 2017. *See* Enactment 2 of 2014 Va. Acts chs. 111, 135. After submitting the amendment, Virginia enacted H.B. 2200, repealing the expiration date and thereby making the 2014 changes permanent. *See* 2017 Va. Acts Ch. 7. We base our findings on the permanent status of the 2014 statutory revisions at Va. Code 45.1–270.4.

Most recently, during a 2021 special legislative session, the Virginia legislature enacted Senate Bill 1453 (S.B. 1453) (approved March 24, 2021) and House Bill 1855 (H.B. 1855) (approved April 7, 2021). These bills amended the Virginia Code to, among other things, rename the Department from the ''Department of Mines Minerals and Energy'' to the ''Department of Energy,'' and recodify and reorganize Virginia's mining laws from Title 45.1, *Mines and Mining,* to Title 45.2, *Mines, Minerals, and Energy,* effective October 1, 2021. *See* 2021 Va. Acts, Sp. S. I, chs. 387, 532; *see also* Va. Code 45.2–1000—45.2–1051 (recodification of VACSMCRA). Virginia has not requested that OSMRE review 2021 Va. Acts, Sp. S. I, chs. 387, 532. This notification of our approval of certain amendments to Virginia's regulatory program pertains only to the identified changes to Virginia's program reflected in 2014 Va. Acts chs. 111, 135 and 2017 Va. Acts Ch. 7 and does not address the 2021 enactment. For that reason, and for the sake of clarity, this document will refer to provisions of VACSMCRA as they were codified before October 1, 2021. For reference, Va. Code 45.1–241, –270.3, and –270.4 discussed in this document now appear

at Va. Code 45.2–1016, –1045, and –1046, respectively.

III. OSMRE's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, with deferrals, as described below.

A. Performance Bonds: Self-Bonding

Virginia seeks to revise the following statutory and regulatory provisions related to self-bonding.

1. Revised Statutes at Title 45.1 of the Virginia Code: Substantive changes to VACSMCRA as amended by 2014 Va. Acts chs. 111, 135 that involve self-bonding are described along with our findings.

a. Va. Code 45.1–241, Performance Bonds: Virginia seeks to revise subsection C of this section, which addresses the type of performance bond acceptable to ensure that reclamation is completed during and after mining activities. The first sentence, which Virginia seeks to delete, allowed the operator to submit a self-bond without a separate surety when the applicant could meet certain requirements. The requirements involved demonstrating the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation. This revision eliminates the self-bonding provision of the law that was originally approved on December 27, 1983.

b. Va. Code 45.1–270.3, Initial Payments into Fund; Renewal Payments; Bonds: Virginia seeks to delete subsection C, which addresses the acceptance of a performance bond submitted without separate surety (self-bond) for underground mining and surface mining operations covered by the ABS.

2. Revised Regulations at Title 4 of the Virginia Administrative Code (VAC): Virginia requests the following deletions from DMME's administrative regulations at Chapter 130, *Coal Surface Mining Reclamation Regulations.* Virginia states that the deletions in Chapter 130 reflect the deletion of the statutory provisions at Va. Code 45.1–241 and 45.1–270.3 relating to self-bonding.

a. 4 VAC 25–130–700.5, Definitions: Virginia seeks to delete the definitions of ''*cognovit note,*'' ''*indemnity agreement,*'' and ''*self-bond*'' to reflect the proposed deletion of the self-bonding provisions under 4 VAC 25–130–801 and Va. Code 45.1–241.C and 45.1–270.3, as described above.

b. 4 VAC 25–130–800.12, Form of the Performance Bond: We note that Virginia included 4 VAC–25–130–800.12 as part of the original submission but did not indicate any revision at this section. Virginia later confirmed its intent to remove subparagraph (f) (self-bond) from the list of prescribed types of allowable performance bond, reflecting the proposed deletion of the self-bonding provisions of VACSMCRA.

c. 4 VAC 25–130–801.12, Entrance Fee and Bond: Virginia seeks to delete subsections (c) and (d) to reflect the proposed deletion of the self-bonding provisions of VACSMCRA.

Subsection (c) provides that Virginia may accept the bond of an applicant of an underground mining operation without surety as provided by 4 VAC 25–130–801.13 upon a showing of an applicant's worth equivalent to $1 million and certified by an independent certified public accountant (CPA) initially and annually.

Subsection (d) provides that Virginia may accept the bond of an applicant of a surface mining operation or associated facility without separate surety if certain conditions are met (*e.g.,* establishment of a suitable agent for service of process, satisfactory continuous operation and financial solvency, and submission of an indemnity agreement).

d. 4 VAC 25–130–801.13, Self-bonding: Virginia seeks to delete this section to reflect the proposed deletion of the self-bonding provisions of VACSMCRA.

Subsection (a) prescribes the requirements to designate a suitable agent for service of process, provide the name and address of the CPA who prepared the statement of the applicant's net worth, and provide the location of the financial records that were used for the CPA's statement. In addition, it provides the requirements for submitting an acceptable cognovit note.

Subsection (b) prescribes the requirement to provide evidence indicating a history of satisfactory continuous operation and financial solvency.

Subsection (c) requires that the CPA certification be updated to reflect prior obligations and self-bonding liabilities still in effect whenever a Fund participant applies for additional permit(s).

Subsection (d) requires that whenever the conditions upon which the self-bond was approved no longer prevail, Virginia must require the posting of a surety or collateral bond before coal surface mining operations may continue. The permittee is responsible to immediately notify DMME of any change in total liabilities or total assets which would jeopardize the support of the self-bond. If permittees fail to have sufficient resources to support the self-bond, they are deemed to be without bond coverage and in violation of bond requirements.

OSMRE's Finding: Section 509(c) of SMCRA and its implementing regulations at 30 CFR 800.4(d), *Regulatory Authority Responsibilities;* 800.5, *Definitions;* 800.12, *Form of the Performance Bond;* and 800.23, *Self-bonding,* permit a regulatory authority to accept different forms of performance bonds, including self-bonds, as a mechanism to ensure that funds will be available for completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of a forfeiture. The regulatory authority may accept a self-bond without separate surety when the applicant demonstrates, to the satisfaction of the regulatory authority, the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount.

Changes in the coal market and coal mining industry have resulted in changes to the financial solvency of some coal companies and have highlighted the need to ensure adequate financial assurance exists to ensure the reclamation of disturbed mine lands. Therefore, it is prudent that Virginia examined its financial assurance program and reconsidered the types of performance bonds it will accept as a reclamation guarantee. While SMCRA authorizes a regulatory authority to accept a self-bond as financial assurance, it does not require a regulatory authority to do so. SMCRA provides a regulatory authority with discretion to implement more stringent requirements, such as implementing a financial assurance program that requires more security than that provided through a self-bond. We have determined that the elimination of self-bonding through deletions from sections 45.1–241 and 45.1–270.3 of VACSMCRA does not make the Virginia program less stringent than SMCRA or less effective than the Federal regulations. Therefore, we approve these changes.

We note this amendment requests the deletion of the definition of *cognovit note,* at 4 VAC 25–130–700.5, *Definitions,* which we previously approved for deletion under Virginia's Program Amendment No. VA–126 on May 29, 2012. *See* 77 FR 31486, 31488. In that same document, we approved Virginia's definition of *indemnity*

agreement, noting that the Federal regulations did not define the term, but that Virginia's definition was consistent with how the Federal regulations used the term in the definitions of *surety bond, collateral bond,* and *self-bond* under 30 CFR 800.5. *See id.* at 31488. Therefore, we also see no effect to Virginia's program from removing the definition of the term *indemnity agreement* and approve its deletion. Regarding the deletion of the term *self-bond,* we are approving the removal of this definition because it is consistent with Virginia's request, and our approval, of the elimination of self-bonds as a financial assurance mechanism, thereby rendering the definition unnecessary. To the extent that some self-bonded operations remain in Virginia following this amendment, we consider any operative portions of these defined terms to be ''conditions upon which the self-bond was approved'' under 4 VAC 25–130–801.13(d), explained below, and therefore to still apply to existing self-bonded operations subsequent to their deletion. Regarding the deletion of 4 VAC 25–130–800.12(f), 801.12(c) and (d), and 801.13(a)–(c), we have determined that the changes to the VAC reflect changes to VACSMCRA that remove self-bonding from the Virginia program as described above. For the same reasons, the regulatory changes do not render the Virginia program less stringent than SMCRA or less effective than the Federal regulations, and so we are approving these changes.

We are not approving the removal of 4 VAC 25–130–801.13(d) at this time. This subsection requires the permittee to promptly notify Virginia of any condition affecting the permittee's financial status and prescribes the subsequent action to be taken when such conditions exist. Because some operators remain self-bonded, Virginia's request that the entire section on self-bonding be removed would mean that there would not be any regulations in place to address the action the operator or regulatory authority must take should a self-bonded permittee become insolvent or file for bankruptcy. The Federal regulations at 30 CFR 800.23(g) require that if, at any time during the period when a self-bond is posted, the financial conditions of the applicant or non-parent corporate guarantor change so that the conditions upon which the self-bond was approved no longer apply, the permittee must notify the regulatory authority immediately and post an alternate form of bond in the same amount as the self-bond within 90 days after notification. If an adequate bond is not posted by the end of the period allowed, the permittee must cease coal extraction and comply with the provisions of 30 CFR 800.16(e). Paragraph (e)(2) of 30 CFR 800.16 requires that in the event of bankruptcy, the permittee must be deemed to be without bond coverage and must be required to replace bond coverage within 90 days. If an adequate bond is not posted by the end of the 90-day period, the permittee is subject to the provisions of 30 CFR 816.132 or 817.132, which address cessation of operations (temporary and permanent). Mining operations must not resume until the regulatory authority has determined that an acceptable bond has been posted. Subsection (d) of 4 VAC 801.13, which Virginia seeks to delete, addresses the situation mentioned above. Without this subsection, there would not be any regulation that provides for immediate and corrective action, which would render Virginia's administrative regulations less effective than 30 CFR 800.23(g) and its related regulations.

We have determined that the subsection 4 VAC 25–130–801.13(d) cannot be removed until all previously approved self-bonds have either been: (1) lawfully released based on an accurate determination that the permittee has satisfactorily completed all reclamation obligations; or (2) replaced with an adequate substitute bond or set of bonds, each of which is backed by a qualified surety, adequate cash deposit, qualified government securities, qualified bank instruments, or an adequate combination of these forms of financial assurance/bond. Therefore, we are not approving the removal of subsection (d) at this time.

B. Alternative Bonding System (ABS): Entrance Fees, Reclamation Taxes, and Fund Balance Determinations

1. Revised Statutes at Title 45.1 of the Virginia Code: Substantive changes to VACSMCRA, as amended by 2014 Va. Acts chs. 111, 135 and 2017 Va. Acts Ch. 7, that involve the ABS (*e.g.,* entrance fees, reclamation taxes, and Fund balance determinations) are described along with our findings.

a. Va. Code 45.1–270.3, Initial Payments into Fund; Renewal Payments; Bonds: Virginia seeks to revise subsection A, which addresses entrance fee requirements for surface mining permittees participating in the Fund. Subsection A was revised to remove the references to subsections B and C of Va. Code 45.1–270.4, *Assessment of Reclamation Tax Revenues for Fund.* Subsections B and C of Va. Code 45.1–270.4 prescribe the Fund balance conditions upon which a reclamation tax will be collected from operators. Previously, the Fund balances used for determining the amounts of the entrance fees under Va. Code 45.1–270.3.A were the same as those used for determining the amount of reclamation taxes under Va. Code 45.1–270.4.B and C. The entrance fee payments and reclamation tax assessment were based on the same minimum and maximum balance limits of the Fund; the entrance fee or reclamation tax would be increased if the Fund was less than $1.75 million, and the entrance fee would be reduced and the reclamation taxes assessment would cease if the Fund balance was greater than $2 million. However, since Virginia is changing the limits for reclamation tax assessment to $20 million, discussed in section B.1(b) below, the references to the tax limits at subsections B and C of Va. Code 45.1–270.4 no longer apply. Virginia is deleting the references to the tax limits at subsections B and C of Va. Code 45.1–270.4 while retaining the $1.75 million and $2 million Fund balances used to determine the amount of the entrance fee.

Virginia also seeks to revise subsection A to add paragraphs (1) and (2) (which previously appeared under Va. Code 45.1–270.4.C), specifying how the Fund balance must be calculated. Under these paragraphs, planned expenditures are deducted from the Fund balance at the time the engineering cost estimate is prepared, and, if the actual expenditures are less than the engineering cost estimate, an adjustment (credit) is made to the Fund.

OSMRE's Finding: The deletion of cross-references to subsections B and C of Va. Code 45.1–270.4 does not change the entrance fee set forth in Va. Code 45.1–270.3 as we last approved it on February 2, 1990 (55 FR 3588), and has no effect on Virginia's program. Therefore, we are approving the deletions. Regarding the addition of paragraphs (1) and (2), we have determined that these are the same provisions we approved when they existed under section 45.1–270.4.C. *See* 52 FR 49403 (December 31, 1987). Moving these paragraphs to section 45.1–270.3.A has no substantive effect on implementation. Therefore, we are approving these additions.

b. Va. Code 45.1–270.4, Assessment of Reclamation Tax Revenues for Fund: Virginia seeks to revise subsections B and C to: (1) delete the $1.75 million Fund balance threshold, below which the reclamation tax would be imposed on operators until the Fund reached $2 million; (2) delete the $2 million Fund balance threshold, above which the

reclamation tax would cease until the Fund balance fell below $1.75 million; and (3) in place of these thresholds, Virginia seeks to revise subsections B and C to add a new Fund balance threshold of $20 million (herein referred to as a ''cap''), below which the reclamation tax would be imposed on operators, and above which the reclamation tax would cease. Further, these subsections were also changed to clarify that the Fund balance will be determined at the end of ''each'' calendar quarter, not ''any'' calendar quarter as previously provided, and delete paragraphs related to the calculation of the Fund balance, which are moved to Va. Code 45.1–270.3.A as summarized at section B.1.a. above. Virginia also seeks to delete a provision from subsection D that limits the collection of the reclamation tax to only the first year of commencement of coal production, processing, or loading from those operations covered under the permit, in effect imposing the reclamation tax for the duration of operations subject only to the Fund balance threshold of $20 million.

OSMRE's Finding: Section 509(c) of SMCRA provides that we may approve a regulatory authority's ABS if it will achieve the objectives and purposes of the bonding program. Under SMCRA's implementing regulations, set forth at 30 CFR 800.11(e), an ABS must: (1) assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and (2) provide a substantial economic incentive for the permittee to comply with all reclamation provisions. The changes submitted by Virginia alter its existing ABS's ability to ensure the availability of sufficient money to complete reclamation.

First, we caution that a bond pool, particularly in an uncertain coal market, brings inherent risks to participating permittees and to Virginia. If the number of bond pool members and the amount of coal produced in Virginia decline, the production fees placed on coal being produced will need to rise correspondingly to maintain a financially sound and stable bond pool fund. Second, we focused our findings on the review of the provisions of the ABS and Virginia's ability to assure the objectives and purposes of the system are capable of being met. The actuarial recommendations were considered as part of the review. Subsequent oversight reviews of the ABS will be necessary to determine whether or not the ABS meets the provisions of 30 CFR 800.11(e), including the changes approved with this amendment. Our findings of the changes to the Virginia Code related to reclamation tax collection and limits follow:

- *Balance Threshold:* Regarding the reclamation tax assessment limits at Va. Code 45.1–270.4.B, we have determined that the deletion of the $1.75 million and $2 million Fund balance thresholds is a reasonable change to the ABS. Both SMCRA and the Federal regulations at 30 CFR 800.11(e)(1) require that sufficient money be available to complete the reclamation plan for any areas which may be in default at any time, if reclamation must be completed by the regulatory authority. Deleting the $1.75 million and $2 million Fund thresholds increases the amount of funds available to complete the reclamation plan for any areas which may be in default at any time for permits that are bonded under the ABS system. Therefore, this deletion is consistent with 30 CFR 800.11(e)(1), and we are approving it.
- *Fund Cap:* Virginia indicates that a $20 million cap on the Fund to determine reclamation tax payments, is considered a sufficient amount to support a system capable of providing sufficient resources to supplement any site specific underlying financial security that is held in the event of forfeiture at any given time. However, Virginia has not provided a justification for its determination of the cap amount or articulated a reasonable connection between its establishment and the amount of reclamation for which it is providing security. Neither SMCRA nor its implementing regulations allow regulatory authorities to set arbitrary limits on the amount of money to be made available for that purpose. Approving such a cap would not assure that the ABS will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time and would be inconsistent with 30 CFR 800.11(e)(1); therefore, we are deferring our decision on the provisions of sections 45.1–270.4.B and C to the extent that they impose a cap of $20 million. We are approving the continuing collection of the tax beyond $2 million but deferring our decision on the cessation of the tax collection when the Fund reaches $20 million until such time as Virginia either takes legislative action to remove the cap from this statute or demonstrates that $20 million is a sufficient amount of money to complete the reclamation, including water treatment, on any area covered by the Fund. Our deferral has the effect of removing the cap upon the amount of money that can be in the Fund at any given time and will remain in effect until Virginia makes that demonstration.
- *One-Year Period:* With regard to subsection D, we find removing the limitation for collecting reclamation taxes for a one-year period is prudent because it should increase monies deposited into the Fund and is consistent with the Pinnacle Report recommendation and the requirements of 30 CFR 800.11(e)(1). Therefore, we are approving this deletion.

2. Revised Regulations at Title 4 of the Virginia Administrative Code (VAC): Virginia seeks to make the following changes to Chapter 130 of DMME's administrative regulations.

a. 4 VAC 25–130–801.11, Participation in the Pool Bond Fund: Virginia seeks to delete this section, stating that the section is duplicated under revised statutory provisions.

Subsection (a) provides for voluntary participation in the Fund for a permittee that can demonstrate at least a three-year history of compliance under the Act or any other comparable State or Federal Act.

Subsection (b) requires all participants in the Fund pay entrance fees as required by 4 VAC 25–130–801.12(a) and comply with the applicable parts of Va. Code 45.1–241.

Subsection (c) requires an irrevocable commitment by the permittee.

Subsection (d) provides that all fees and taxes are nonrefundable.

Subsection (e) permits the use of monies from the interest accrued to the Fund, as provided by Va. Code 45.1–270.5(B), to support one position for the administration of the Fund. If one position is deemed insufficient to ensure proper administration of the Fund, Virginia can obtain additional assistance if the Reclamation Fund Advisory Board concurs.

OSMRE's Finding: We have determined that 4 VAC 25–130–801.11 subsection (a) is duplicated at Va. Code 45.1–270.2.A; subsection (b) is duplicated at Va. Code 45.1–270.3; and subsection (c) is duplicated at Va. Code 45.1–270.2.B. These provisions are unnecessary to give effect to the statutory requirements, and therefore we approve their deletion. Subsection (d) is not specifically duplicated in the Virginia Code, however, the requirements of Va. Code 45.1–270.2.B provide that participation in the Fund requires an irrevocable commitment on part of the permittee. This commitment involves the payment of fees and taxes; therefore, we have determined that the deletion of this subsection does not alter the program requirements.

Regarding subsection (e), we note that while the administrative regulation

provides specifically that one administrative position is to be funded, Va. Code 45.1–270.5.B provides more generally that the interest accrued from the Fund may be used to properly administer the Fund. We also note that 4 VAC 25–130–801.11(e) references the PBFAC, which was replaced by the RFAB in 1985. Given that there are no counterpart Federal regulations that determine the manner in which the administration of an ABS is to be funded, and the revision merely removes a discretionary limitation on the Fund's administration, we have determined that the deletion of 4 VAC 25–130–801.11(e) does not render the program inconsistent with SMCRA or the implementing regulations and we are approving the deletion.

b. 4 VAC 25–130–801.12, Entrance Fee and Bond: Virginia seeks to revise subsection (a) by deleting the provisions that require an entrance fee of $5,000 when the total balance of the Fund is determined to be less than $1.75 million, an entrance fee of $1,000 when the total Fund balance is greater than $2 million, and a renewal fee of $1,000 from all permittees in the Fund at the time of renewal. Virginia seeks to delete these provisions, stating that they are duplicative of statutory provisions under Va. Code 45.1–270.3.

Virginia also seeks to delete subsection (g), which requires that, if a mining operation is to be in temporary cessation for more than six months, mining operators must post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation prior to the date on which the operation has been in temporary cessation for more than six months. This subsection provides additional time to post bond for operations that were in temporary cessation as of July 1, 1991. It also provides that the amount of the bond required for each area bonded is determined by DMME in accordance with 4 VAC 25–130–800.14 and remains in effect throughout the remainder of the period during which the site is in temporary cessation. When the site returns to active status, the bond posted would be released, provided the permittee had posted bond pursuant to subsection (b) of this section.

OSMRE's Finding: With regard to 4 VAC 25–130–801.12 subsection (a), we note that this regulation is duplicated at Va. Code 45.1–270.3.A and is not necessary to give effect to the statutory requirement; therefore, we are approving its deletion. With regard to subsection (g), we note that the regulation is duplicated in the statute at Va. Code 45.1–270.3.E, with the exception of the provision that states that the amount of the bond required for each permit area bonded under this subsection must be determined by DMME in accordance with 4 VAC 25–130–800.14. The provisions at 4 VAC 25–130–800.14, *Determination of Bond Amount* (used for full-cost bond permits), require the following: subsection (a) requires bond calculations be determined considering the reclamation plan and the estimated cost of reclamation; subsection (b) requires a minimum bond of $10,000; and subsection (c) provides that liability insurance may be used to repair material damage resulting from subsidence.

Va. Code 45.1–270.3.E requires full cost bond for these areas until the operation is back in active status and the operator can demonstrate alternative bonding requirements are met. The remainder of the approved Virginia program would still be relevant in determining the proper amount of full-cost bonding. Therefore, the specific reference to 4 VAC 25–130–800.14 being deleted by this revision to 4 VAC 25–130–801.12 does not affect the Virginia program as we have already approved it. Therefore, we are approving this deletion.

c. 4 VAC 25–130–801.14, Reclamation Tax: Virginia seeks to delete this section, stating that these provisions are duplicated in revised statutory provisions.

Subsection (a) provides that if, at the end of any calendar quarter, the total balance of the Fund (including interest) is less than $1.75 million, the reclamation tax assessment will be imposed. The reclamation tax amounts are provided as $.04/ton for surface mining operations; $.03/ton for underground mining; and $.015/ton for coal processing or preparation facilities, and are due within 30 days after the end of each taxable calendar quarter.

Subsection (b) provides that if, at the end of any calendar quarter, the total balance of the Fund (including interest) exceeds $2 million, payments will be deferred until required by subsection (a).

Subsection (c) provides that no permittee is required to pay the reclamation tax on more than 5 million tons produced per calendar year, regardless of the number of permits held by the permittee, except as provided in subsection (e).

Subsection (d) applies to permittees holding more than one type of permit and the amount of reclamation tax to be paid in such situations. It provides that any permittee holding more than one type of permit will not pay more than $.055/ton on coal originally surface mined by that permittee or $.045/ton of coal originally deep mined (underground mined) by that permittee. It also provides that for permittees holding one permit upon which coal is both mined and processed or loaded, the permittee will not pay more than the tax applicable to the surface or underground mining operation. However, the permittee must pay $.015/clean coal ton for all coal processed and/or loaded at the permit which originated from other permits during the calendar quarter.

Subsection (e) provides that the reclamation tax is required during the one-year period commencing with and running from the date of commencement of coal production, processing, or loading from the permit.

OSMRE's Finding: We note that subsection (a) is duplicated at proposed Va. Code 45.1–270.4.A and B; subsection (b) is duplicated at Va. Code 45.1–270.4.C; and subsections (c) and (d) are duplicated at proposed Va. Code 45.1–270.4.D (which will be re-lettered from existing section 45.1–270.4.E). Subsection (e) is duplicated at existing Va. Code 45.1–270.4.D (which is proposed to be deleted). We note that the following sentence appears in the regulations under subsection (d)(2) but does not appear in the statute: ''However, the permittee shall pay the one and one-half cents per clean ton for all coal processed and/or loaded at the permit which originated from other permits during the calendar quarter.'' We understand from Virginia's submission that this provision duplicates Virginia's statutes, including its current interpretation and implementation of the statutes, and therefore the deletion of this sentence would not affect Virginia's current implementation of its program. We also note that there are no counterpart Federal regulations that direct the way a state's ABS is to be funded. To the extent that the deletion of this sentence would cause Virginia to collect the reclamation tax in a different manner, our review would occur in the course of our oversight of the adequacy of the ABS system as a whole. For these reasons, deletion of 4 VAC 23–130–801.14 does not render the remaining Virginia provisions inconsistent with SMCRA or the Federal regulations and we are approving the deletion in its entirety.

d. 4 VAC 25–130–801.16, Reinstatement to the Pool Bond Fund: Virginia seeks to delete this section, stating that it duplicates the revised statutory provisions.

Subsection (a) involves the consequences of an operator's default on any reclamation obligation that causes the Fund to incur reclamation expenses. The permittee will no longer be eligible to participate in the Fund for any new permit or any permit renewal thereafter until full restitution for such default has been made to the Fund. The Director, along with the recommendation from the PBFAC (which was later replaced by the RFAB but not updated in this regulation), may require that the person seeking reinstatement pay interest at the composite rate determined by the Treasurer of Virginia compounded monthly.

Subsection (b) requires compliance with subsection (a) before seeking new permits or renewal of existing ones.

OSMRE's Finding: We note that subsections (a) and (b) are duplicated at Va. Code 45.1–270.6.A, with two exceptions: (1) subsection (a) provides that the permittee will not be eligible to participate in the bond pool for any new permit or any permit renewal, whereas the statutory provisions do not mention permit renewal; and (2) subsection (a) provides the Director of DMME discretion to impose an interest payment upon the permittee if approved by the PBFAC, whereas the statutory provisions do not.

Regarding the regulation's reference to permit renewal, the statute at Va. Code 45.1–270.6.A states in relevant part: ''An operator who has defaulted on any reclamation obligation and has thereby caused the Fund to incur reclamation expenses as a result thereof *shall not be eligible to participate in the Fund thereafter* until restitution for such default has been made.'' (emphasis added). Moreover, Va. Code 45.1–270.2 provides, in relevant part, that: ''Commencement of participation in the Fund, as to the applicable permit, shall constitute an irrevocable commitment to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.'' We interpret this statutory language to bar all operators who trigger this condition from participation in the Fund, whether their permits are new or up for renewal, and any operator who defaults on a reclamation obligation and causes the Fund to incur expenses resulting therefrom is obligated to make restitution before a permit renewal can be approved. Therefore, Virginia's proposal to delete 4 VAC 25–130–801.16(a) has no effect on Virginia's program.

Regarding interest payments, we note that Va. Code 45.1–270.6.A requires restitution by operators before they may be reinstated as a Fund participant. We understand from Virginia's submission that this provision duplicates Virginia's statutes, including its current interpretation and implementation of the statutes, and therefore the deletion of this sentence would not affect Virginia's current implementation of its program seeking interest as part of restitution to the Fund. We also note that there are no counterpart Federal regulations that direct the manner in which a state would seek such restitution. To the extent that the deletion of this sentence would cause Virginia to collect less restitution by omitting interest, just as it could currently at the Director's discretion, our review would occur in the course of our oversight of the adequacy of the ABS system as a whole. For these reasons, the deletion of 4 VAC 25–130–801.16 does not render the Virginia program inconsistent with SMCRA, and we are approving the deletion in its entirety.

C. Public Participation and Proof of Publication Language Referenced in the State Regulations

In response to our 2014 review findings, Virginia seeks to revise requirements related to the timing of an applicant's submission to DMME of proof that it had published public notice of its exploratory permit applications, mining permit-related applications, and bond release applications referenced in 4 VAC 25–130–772.12, 778.21, and 800.40. In its submission, Virginia stated that these provisions are being revised to coincide with corresponding Federal regulations.

Virginia proposes to revise its regulations by removing the timeframe within which a copy of the required newspaper announcement or proof of publication must be filed with DMME. Rather than requiring proof of publication within four weeks of the date of publication, the revised regulations will require the applicant to submit proof of publication with a subsequent submittal related to the permit application. The following sections related to proof of publication of notice for exploratory permit applications, mining permit-related applications, and bond release applications are affected by this change:

1. Coal Exploration—4 VAC 25–130–772.12, Permit Requirements for Exploration Removing more than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations: While the change was not specifically described in its submission, a comparison of its existing regulation to its revised regulation shows that Virginia seeks to revise subsection (c)(1) of this section to reflect the change noted above: removing the requirement that proof of publication be submitted within four weeks from the date of publication, and instead requiring such proof to be made part of a subsequent submittal related to the permit application prior to approval.

OSMRE's Finding: We have determined that this change does not render Virginia's program less stringent than the section 512 of SMCRA or less effective than the Federal regulations at 30 CFR 772.12. In promulgating the public participation process for coal exploration permits in § 772.12, we explained that exploration permits generally do not have as adverse an impact on the environment as surface mining, and therefore there can be more flexibility in the public participation requirements. *See* 48 FR 40622, 40628 (September 8, 1983). For that reason, § 772.12 provides no requirement to submit a copy of the newspaper advertisement or proof of publication to the regulatory authority for coal exploration permits. Therefore, Virginia's requirement to submit proof of publication is more stringent than Federal requirements, and we approve the change.

2. Surface Mining—4 VAC 25–130–778.21, Proof of Publication: Virginia seeks to revise this section to reflect the change noted above. As we stated in our 2014 report, we recommended Virginia consider changing its regulations so that its use of its new electronic permitting process does not cause a violation of the program. The electronic permitting process altered the manner in which the State transmitted its comments on an application to the applicant and the manner in which the applicant could submit its responses to the State. DMME's electronic permitting process requires all submissions, which include responses to its comments and items like proof of publication, to be included in one zip file to avoid piecemeal review and revision of the application. DMME does not accept receipt of any items submitted outside this format or individually. During our review we found that this process creates an obstacle for the permittee's submittal of the proof of publication within four weeks after the date of last publication as required by Virginia's regulations. This practice resulted in over half of the sampled applications in the review not meeting Virginia's four-week timeframe. Virginia states it would not be feasible to keep the current requirement that proof of publication be submitted within four weeks after the last date of publication due to fact that the application, the contents of which must

be kept together in one zip file, may be anywhere in the electronic process. Therefore, the requirement of submitting the proof of publication in the next subsequent electronic submission after the last date of publication, but prior to approval, is the option that best accommodates Virginia's electronic permitting system.

OSMRE's Finding: Unlike the proof of public notice requirements for coal exploration permit applications, the Federal regulations at 30 CFR 778.21, *Proof of publication,* require that the copy of the advertisement or proof of publication be submitted within four weeks after the last date of publication. The requirement to submit proof of publication was intended to aid in determining whether applicants complied with the requirement to publish public notice in a local newspaper of general circulation in the locality of the proposed operation and was initially proposed to require that proof of publication be submitted within one week after the last date of newspaper publication. *See* 43 FR 41662, 41693 (September 18, 1978). Based on public comment over the concern that delays occur in applicants receiving proof of publication from publishers, we adopted the commenter's suggestion that proof of publication be submitted within four weeks, accepting the commenter's reasoning that four weeks would be a reasonable length of time that would not unduly delay the application process. *See* 44 FR 14902, 15026 (March 13, 1979).

Based on this regulatory history of 30 CFR 778.21, we have determined that the change at 4 VAC 25–130–778.21 does not render Virginia's program less effective than the Federal regulations. Virginia's revision only relates to the length of time that may elapse before DMME receives proof that an applicant has complied with its duty to publish public notice. The revision does not relieve an applicant of its duty to publish the notice in a timely fashion, nor does it affect the public's opportunity to participate in the permit application process. Moreover, Virginia's revision does not unduly delay the permit review process. We understand that electronic permitting is designed to improve the permitting process by reducing administrative delays that existed in the conventional process and making public participation more accessible. To the extent that these improvements require greater flexibility regarding the time in which an applicant can submit proof of publication to DMME, prior to final action on the application, the proposed revision is no less effective than the Federal regulations, and we approve this change.

3. Bond Release: 4 VAC 25–130–800.40, Requirements to Release Performance Bonds: Virginia seeks to revise this section, which addresses public notice and proof of publication requirements for bond release applications and other documents required to be submitted with the bond release application. Virginia seeks to redraft paragraph (a)(2) as two paragraphs, numbered paragraphs (a)(2) and (3), and renumber existing paragraph (a)(3) as paragraph (a)(4). Existing paragraph (a)(2) includes a combination of notice requirements: it requires that proof of publication of public notice be submitted within 30 days after an application for bond release had been filed, specifies what information the public notice advertisement must contain and how and where it must be published, and requires that the applicant must submit copies of letters it is required to send to adjacent landowners and other enumerated parties. The revised paragraph (a)(2) addresses the advertisement and newspaper circulation requirements of the bond release application and what the advertisement should include. The revised paragraph also requires that the proof of publication be made part of a subsequent submittal after the last date of publication prior to approval, rather than within 30 days of submission of the application. New paragraph (a)(3) contains the requirement to submit copies of notice letters.

OSMRE's Finding: For the same reason noted in our finding in C.3., above, we have determined that the change to the timeframe in which the applicant must submit proof of publication does not render Virginia's program less effective than the Federal regulations at 30 CFR 800.40, and the changes are therefore approved. The remaining changes only separate and rearrange existing language for clarity.

D. Editorial Changes

Virginia also proposed certain editorial revisions, which include clarification of syntax, renumbering of paragraphs, and reference changes, but do not change the administrative regulations substantively. The editorial statutory changes are found in sections 45.1–270.3 (clarification of syntax in subsection A and re-lettering of subsections D, E, and F) and 45.1–270.4 (clarification of syntax in subsections B and C and clarification of syntax and renumbering of subsection E). The editorial regulatory changes are found at 4 VAC 25–130–801.12 (re-lettering of subsections (e) and (f)) and 4 VAC 25–130–801.15 (clarification at subsection (a) and reference changes at subsections (b) and (d)). Because the changes in these sections are only editorial adjustments and corrections, we are approving them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on two occasions. We announced receipt of the amendment and opportunity for public comment and/or hearing in the October 22, 2015, **Federal Register** (80 FR 63933) (Administrative Record No. 2026). We reopened the public comment period in the February 8, 2016, **Federal Register** (81 FR 6479) (Administrative Record No. 2029) to afford the public more time to comment. The public comment period ended on March 9, 2016. On March 9, 2016, we received a combined response from The Southern Appalachian Mountain Stewards (SAMS) and Sierra Club (SC) (Administrative Record No. 2030). We received a letter dated March 9, 2016, which was signed by 1,185 private citizens (Administrative Record No. 2032). Identical form letters dated January 14, 2016, through January 19, 2016, were received from 21 private citizens (Administrative Record No. 2031). No public hearing was requested.

A. SAMS and SC Comments: The following summarizes the comments from the SAMS and SC.

1. Public Participation Requirements: The commenters support the proposal to revise Virginia's public participation requirements to coincide with the Federal regulations but note that Virginia's submission includes descriptions of the revisions that are unhelpful, conclusory statements that do not explain the events or conditions that prompted the revisions, and how the revisions resolve those concerns. The commenters suggest requiring Virginia to provide a narrative description of each proposed program change, including the expected effect that the proposed change would have on the DMME's administration of the program. The commenters suggest that this would substantially assist members of the public in understanding the purpose and effect of the proposed changes.

OSMRE's Response: As noted in OSMRE's findings under section C, *Public Participation and Proof of Publication,* the intent of the revisions was not to make Virginia's regulations coincide with corresponding Federal regulations. Nevertheless, Virginia's

revisions do not affect the public's opportunity to participate and allow the DMME to ensure that permit applicants comply with the requirement to publish notice of applications without unduly delaying the permit review process.

2. Self-Bonding: The commenters support the proposal to repeal and rescind statutory and regulatory provisions that authorize Virginia to accept self-bonds. However, the commenters note that Virginia is not compelling operators that currently use self-bonding to transition to conventional financial assurances and further note that eliminating self-bonding by itself does not raise the assets in the bond pool fund. The commenters urge us to require Virginia to transition all existing self-bonds to conventional bonds. Alternatively, commenters state that if we determine that Virginia may continue to maintain existing self-bonds, commenters oppose approval of the rescission of certain regulatory definitions and substantive requirements governing self-bonds, unless and until Virginia certifies to us that every previously approved self-bond has either been: (1) lawfully released based on an accurate determination that the permittee has satisfactorily completed all reclamation obligations; or (2) replaced with an adequate substitute bond or set of bonds, each of which is backed by a qualified surety, adequate cash deposit, qualified government securities, qualified bank instruments, or an adequate combination of these forms of financial assurance. The commenters reference a settlement agreement between Virginia and a coal company that did not require the coal company to replace its self-bond with another form of performance bond.

OSMRE's Response: We decline to require Virginia to transition existing self-bonds to conventional bonds because SMCRA affords the regulatory authority the discretion to accept different forms of performance bonds, including self-bonds, as a mechanism to ensure that funds will be available for completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of a forfeiture. If we find, through our oversight activities, that a self-bonded permittee no longer meets Virginia's program requirements, we can initiate appropriate action. Also, we recognize that eliminating self-bonding does not increase the assets in the bond pool fund. However, the elimination of future self-bonding decreases the potential liability to the Fund and is approved for that reason. We agree with the commenters' alternative suggestion to maintain certain provisions governing existing self-bonds. Our findings are under section A, *Performance Bonds: Self-Bonding.*

3. Escrow Bonding: The commenters also note that Virginia proposes to rescind the administrative regulations that authorize and govern escrow bonding at 4 VAC 25–130–800.23 but has not proposed to remove the authorization in 4 VAC 25–130–800.12 (c), (d), and (e) of the use of escrow accounts as a form of performance bond. The commenters request that we require Virginia to rescind those provisions because with this amendment proposal, Virginia will no longer permit this type of bonding form.

OSMRE's Response: Virginia clarified that it was not the State's intent to rescind the escrow bonding regulation.

4. ABS: The commenters identified a number of risks associated with the solvency of the bond pool fund: inclusion of self-bonded operations, status of operations (*e.g.,* the number of operations under temporary cessation, partial cessation, or ''active/not producing'' status), liability for sites that require water treatment, and decrease in Fund revenue because of a decline in coal production. The commenters recognize that the changes to Virginia's statutes and regulations governing the ABS would incrementally improve the system, but, according to the commenters, the changes are not enough to guarantee financial soundness of its ABS. The commenters' support is contingent on: (1) Virginia's presentation to us, on or before July 1, 2016, of a current, independent, professional actuarial report concerning the current solvency of the ABS that is based on complete data concerning current assets and liabilities of the Fund and a reasonable forecast of changes in assets and liabilities over the next five years; and (2) Virginia's adoption, on or before the close of the 2017 session of the Virginia General Assembly, of appropriate additional statutory and regulatory amendments that effectively implement each of the recommendations of the May 29, 2012 Pinnacle Report. The Pinnacle Report concluded that the primary risks to the Fund were the participation by companies, whether directly or through parent-subsidiary relationships, that held multiple permits that could be forfeited simultaneously in the event of default, the number of self-bonded permits, and that the risk of self-bonding was not reflected in the coal tax rate.

The commenters also support their position by referencing our November 1990 report entitled ''Alternative Bonding Systems: An Analytical Approach and Identified Factors to Consider for Evaluating Alternative Bonding Systems'' (commenters refer to it as the ''ABS Memo'') and a letter from an internationally recognized actuarial consultant, Tillinghast, dated November 9, 1990 (commenters refer to it as the Tillinghast Letter). The commenters state that it is the only known criteria that we have endorsed related to the evaluation of an alternative bonding system.

As the November 1990 report states, the analysis was conducted by an ad hoc committee whose purpose was to develop consistent considerations for evaluating an ABS. The report identifies factors which are recommended for use in analyzing and understanding the mechanisms for an ABS to operate as a solvent and legally sufficient system capable of complying with statutory and regulatory requirements. The considerations were developed through research and discussions with states and were supplemented with the advice of Tillinghast.

The commenters refer to these guidelines as our stated criteria for evaluating an ABS and state that SMCRA requires us to evaluate each system on every occasion when the regulatory authority proposes to change it. Referring to those guidelines, the commenters had three areas of concern, which we will address below.

a. Periodic Financial Soundness Reviews: The commenters state that both the Pinnacle Report and the OSMRE ABS Memo emphasize and/or recommend periodic financial soundness reviews. Accordingly, the commenters state that we should require an updated actuarial report on the solvency of the bond pool fund. The commenters suggest that a current actuarial report be required and should focus on, among other things, the risk posed by: mining permits held by companies currently in bankruptcy; mines in temporary cessation and those in active/non-producing status; Virginia's reliance on its coal reclamation tax; coal production; Virginia's reclamation tax rate; DMME's lack of authority to impose one or more retroactive or special assessments in the future; and specific bonding requirements at Va. Code 45.1–270.2.D, 45.1–270.30.D, 45.1–270.3.E, and 45.1–270.4.D, which limit the amount of tax collected from any individual operator. The commenters further request that the updated evaluation incorporate the risk analysis factors highlighted in the OSMRE ABS Memo. In particular, they point to the need to project the level of expenditures with respect to current,

projected, and incurred, but not reported liabilities and related costs. They contend the updated actuarial report must consider the forfeiture rate that would occur following the financial failure of most participating permittees in the ABS, including failures resulting in a severe economic downturn that could cause a failure of the industry.

The commenters suggest that we should direct Virginia to consider, based on the results of the new actuarial study, eliminating the bond pool system entirely if financial distress in the coal mining industry continues. The commenters suggest individual surety bonds for the full reclamation amount offer the most reliable guarantee that funds will be available to carry out the reclamation required by SMCRA.

OSMRE's Response: OSMRE's findings regarding Virginia's ABS are found under *Section B. Alternative Bonding System (ABS): Entrance Fees, Reclamation Taxes, and Fund Balance Determinations.* We agree with the commenters that Virginia has taken steps to improve its ABS. We rely on actuarial findings and recommendations as well as our oversight activities to assist us in our determination of whether the ABS is capable of satisfying the requirements of 30 CFR 800.11(e). However, we are not at this time requiring Virginia to adopt any particular recommendations from the Pinnacle Report. We recognize that actuarial recommendations are based on past history and forecasts and do not necessarily reflect current economic conditions and financial soundness. Our oversight activities will continue to focus on the solvency of the Fund, including the financial status of self-bonded permittees, and will evaluate Virginia's reporting on the solvency of the Fund accordingly.

b. Authority to Adjust Fees and Taxes: The commenters state that they oppose, as a matter of administrative principle, the aspects of the proposed amendment to the ABS that commenters believe effectively rescind the authority of the DMME Director to promulgate regulations (effective only on our approval pursuant to 30 CFR 732.17(g)) that set, from time to time, specific entrance fees, renewal fees, reclamation tax rates, and special assessments in amounts that reasonably can assure the solvency of the ABS. Instead, the commenters state that we should require Virginia to expressly authorize the Director to promulgate regulations setting the amount or rate of such specific fees, above a set floor, so as to enable the Director to make timely adjustments that are or may become necessary to achieve or maintain solvency of the ABS. The commenters, citing the OSMRE ABS Memo, state that we have a duty to assure, as part of the consideration for approving an ABS, that any such system include ''legislative authority that allows the [regulatory authority] to adjust rates as needed to cover accountable liabilities.''

OSMRE's Response: We have determined that Virginia's proposed changes do not rescind any authority from DMME to set fees. The authority provisions to which the commenters refer, principally 4 VAC 25–130–801.12 and 801.14, merely duplicate the statutory fee requirements and do not grant DMME the independent authority to deviate from the fees set by the statute. Therefore, their rescission does not remove authority from DMME. The commenters' assertion that the OSMRE ABS Memo requires us to ensure that DMME, rather than the Virginia General Assembly, has the statutory authority to adjust fees is incorrect. The recommendation the commenters reference relates to elements that states should include in the narrative description of their ABS program only if their ABS program includes those elements, subject to legal restrictions that include those in the state constitution. Moreover, neither section 509(a) of SMCRA, nor the Federal regulations at 30 CFR 800.11(e), dictate how ABS systems must be funded. Therefore, we do not require state legislatures to grant regulatory agencies the authority to adjust fees and taxes because the states may choose to meet the requirements of SMCRA and its implementing regulations through other means. *See, e.g.,* 66 FR 67446 (December 28, 2001) (approving the creation of a Special Reclamation Fund Advisory Council that reports to the West Virginia Legislature and the Governor on the adequacy of the special reclamation tax set by statute). The recommendations in the OSMRE ABS Memo only suggest that if an ABS is funded a certain way, those elements should be included in the narrative submission.

c. Fund Cap: The commenters support eliminating the $2 million Fund cap and increasing the Fund cap to $20 million because this change would allow additional money to accumulate to cover the potential liabilities of the Fund. However, the commenters note that Virginia has not demonstrated that $20 million would be sufficient to cover all of the potential liabilities to the Fund, especially in light of declining coal production and industry finances. The commenters suggest that Virginia follow the recommendation of the Pinnacle Report to repeal the Fund cap altogether, thereby allowing the Fund to continue growing.

OSMRE's Response: We agree with the commenters that the $2 million Fund cap should be removed. We also agree with the commenters that Virginia has not demonstrated that $20 million would be sufficient to make Virginia's ABS solvent. Our findings regarding Virginia's ABS are found under section B, *Alternative Bonding System (ABS): Entrance Fees, Reclamation Taxes, and Fund Balance Determinations.*

B. Private Citizen Comments: The following summarizes the comments that were received from private citizens.

The commenters state that, in approving Virginia's regulations, we should consider the comments submitted by the SAMS and SC. They opine that although eliminating self-bonding is a good start, Virginia needs to do more to prevent the citizens from bearing the costs of mine clean up. They request that we advise Virginia that it needs to do more and undertake a new study that actually accounts for the effects of decreased coal production and mine operator insolvency and eliminate caps on its pooled reclamation fund.

OSMRE's Response: We have considered the SAMS and SC's comments during the review process and have addressed future actuarial studies and the Fund caps. Our findings are located under section B, *Alternative Bonding System (ABS): Entrance Fees, Reclamation Taxes, and Fund Balance Determinations.* Virginia is aware of its responsibility to continually assess the status of its bonding program, specifically the solvency of the bond pool. We believe that, in managing the bond pool, Virginia will conduct a financial analysis of the bond pool using third-party actuarial studies as it deems necessary. In our oversight of the Virginia bonding program, particularly of the bond pool and its solvency, we will be reviewing how Virginia assesses and manages the bond pool. If in the future we determine that Virginia is not managing the bond pool program effectively, we will notify the State of our findings through the 732 processes for Virginia to undertake any corrective actions required.

Federal Agency Comments

On June 23, 2015, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record No. 2025). No Federal agency comments were received.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et. seq.*) or the Clean Air Act (42 U.S.C. 7401 *et. seq.*). None of the revisions that Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on June 23, 2015, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA (Administrative Record No. 2025). The EPA did not provide any comments.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 23, 2015, we requested comments from the Virginia Department of Historic Resources on Virginia's amendment (Administrative Record No. VA 2025). We did not receive any comments.

V. OSMRE's Decision

Based on the above findings, we are approving Virginia's amendment that was submitted to us on June 12, 2015 (Administrative Record No. 2024), with the following two deferrals:

1. We are deferring our decision on the removal of 4 VAC 25–130–801.13(d) of the self-bonding regulations until all previously approved self-bonds have either (1) been lawfully released based on an accurate determination that the permittee has satisfactorily completed all reclamation obligations, or (2) been replaced with an adequate substitute bond or set of bonds, each of which is backed by a qualified surety, adequate cash deposit, qualified government securities, qualified bank instruments, or an adequate combination of these forms of financial assurance.

2. We are deferring our decision on the provisions of 45.1–270.4.B and C of the Virginia Code to the extent that they impose a cap of $20 million. We are approving the continuing collection of the tax beyond $2 million but deferring our decision on the cessation of the tax collection when the Fund reaches $20 million until such time as Virginia either takes legislative action to remove the cap from this statute or demonstrates that $20 million is a sufficient amount of money to complete the reclamation, including water treatment, on any area covered by the Fund. Our deferral has the effect of removing the cap upon the amount of money that can be in the Fund at any given time and will remain in effect until Virginia makes that demonstration.

To implement this decision, we are amending the Federal regulations at 30 CFR part 946 that codify decisions concerning the Virginia program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionality Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review, 13563—Improving Regulation and Regulatory Review, and 14094—Modernizing Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program is exempted from OMB review under Executive Order 12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program amendment that Virginia drafted.

Executive Order 13132—Federalism

This rule has potential federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to ''grant the States the maximum administrative discretion possible'' with respect to Federal statutes and regulations administered by the States. Virginia, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an amendment to the Virginia program submitted and drafted by the State, and thus is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal Government and Tribes. The basis for this determination is that our decision on the Virginia program does not include Indian lands, as defined by SMCRA, or regulation of activities on Indian lands. Indian lands are regulated independently under the applicable, approved Federal program. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon the Federal regulations that set minimum performance standards for alternative bonding systems for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the related Federal regulations.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the Federal regulations that set minimum performance standards for alternative bonding systems, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,

Regional Director, North Atlantic-Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 946 is amended as follows:

PART 946—VIRGINIA

■ 1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Amend § 946.12 by adding paragraph (d) to read as follows:

§ 946.12 State program provisions and amendments not approved.

* * * * *

(d) We are not approving the following portions of provisions of the proposed program amendment that Virginia submitted on June 12, 2015:

(1) We are deferring our decision on the removal of 4 VAC 25–130–801.13(d) of the self-bonding regulations until all previously approved self-bonds have either been lawfully released based on an accurate determination that the permittee has satisfactorily completed all reclamation obligations or replaced with an adequate substitute financial assurance under the approved Virginia regulatory program.

(2) We are deferring our decision on the provisions of 45.1–270.4.B and C of the Virginia Code that address reclamation tax revenue to the extent that they impose a cap of $20 million. We are approving the continuing collection of the tax beyond $2 million but deferring our decision on the cessation of the tax collection when the Fund reaches $20 million until such time as Virginia either takes legislative action to remove the cap from this statute or demonstrates that $20 million is a sufficient amount of money to complete the reclamation, including water treatment, on any site covered by the Fund.

■ 3. Amend § 946.15 in the table by adding the entry ''June 12, 2015'' in chronological order by ''Date of Final Publication'' to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
June 12, 2015	December 11, 2023	45.1–241.C (Performance Bonds), 45.1–270.3 (Initial Payments into Fund; Renewal Payments; Bonds); and 45.1–270.4 (Assessment of Reclamation Tax Revenue for Fund) (partial). 4 VAC 25–130–700.5 (Definitions) ''indemnity agreement'' and ''self-bond'' (deleted); 772.12 (Permit Requirements for Exploration Removing more than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations); 778.21 (Proof of Publication); 800.12(f) (Form of the Performance Bond); 800.40© and (d) (Requirements to Release Performance Bonds); 801.11 (Participation in the Pool Bond Fund) (deleted); 801.12 (Entrance Fee and Bond); 801.13 (Self-bonding) (deleted); 801.14 (Reclamation Tax) (deleted); 801.15 (Collection of the Reclamation Tax and Penalties for Non-Payment); 801.16 (Reinstatement to the Pool Bond Fund) (deleted).

[FR Doc. 2023–27105 Filed 12–8–23; 8:45 am]
BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority; Technical Correction

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The U.S. Postal Service™ is amending its regulations governing mail covers so that they are consistent with current mail classification terminology.

DATES: This rule is effective December 11, 2023.

ADDRESSES: Questions on this action are welcome. Mail or deliver written comments to Postal Inspector in Charge, Office of Counsel, U.S. Postal Inspection Service, 475 L'Enfant Plaza SW, Room 3114, Washington, DC 20260–3100.

FOR FURTHER INFORMATION CONTACT: Louis DiRienzo, Postal Inspector in Charge, Office of Independent Counsel, U.S. Postal Inspection Service, 202–268–2705.

SUPPLEMENTARY INFORMATION: On May 22, 2023, the Postal Service™ published a final rule announcing changes to domestic competitive products. 88 FR 32824. Among the changes in that final rule are provisions expanding First-Class Package Service to subsume USPS Retail Ground and Parcel Select Ground, eliminating USPS Retail Ground and Parcel Select Ground as standalone products, renaming the expanded First-Class Package Service USPS Ground Advantage™, and further segregating the USPS Ground Advantage product into retail and commercial price categories. The Postal Service is accordingly updating its regulations to adjust the definitions of sealed and unsealed mail to incorporate these changes.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Crime, Law enforcement, Penalties, Privacy.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 233 as follows:

PART 233—INSPECTION SERVICE AUTHORITY

■ 1. The authority citation for 39 CFR part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1), 3012, 3017, 3018; 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–208, 110 Stat. 3009; Secs. 106 and 108, Pub. L. 106–168, 113 Stat. 1806 (39 U.S.C. 3012, 3017); Pub. L. 114–74, 129 Stat. 584.

§ 233.3 [Amended]

■ 2. In § 233.3(c)(3), add the words ''USPS Ground Advantage™—Retail'' immediately following ''Priority Mail Express;'' and immediately prior to ''Outbound International Expedited Services (Priority Mail Express International; as well as Global Express Guaranteed items containing only documents);''

■ 3. In § 233.3(c)(4), remove the words ''First Class Package Service; USPS Retail Ground,'' and add in their place the words ''USPS Ground Advantage™—Commercial;''.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–26787 Filed 12–8–23; 8:45 am]
BILLING CODE 7710–12–P

Proposed Rules

Federal Register
Vol. 88, No. 236
Monday, December 11, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards: Revised Size Standards Methodology

AGENCY: U.S. Small Business Administration.

ACTION: Notice of availability of white paper on Revised Size Standards Methodology for comments.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) advises the public that it has revised its white paper explaining how it establishes, reviews, and modifies small business size standards. The revised white paper provides a detailed description of SBA's size standards methodology, including changes from SBA's 2019 Revised Size Standards Methodology (2019 Methodology, available at *www.sba.gov/size*), which guided SBA's recently completed second five-year review of size standards as required by the Small Business Jobs Act of 2010 (Jobs Act). SBA welcomes comments and feedback on the 2023 Revised Methodology, which SBA intends to apply to the forthcoming third five-year review of size standards.

DATES: SBA must receive comments to the 2023 Revised Methodology on or before February 9, 2024.

ADDRESSES: The 2023 Revised Methodology White Paper, titled ''SBA's Size Standards Methodology (December 2023),'' is available on the SBA's website at *http://www.sba.gov/size* and on the Federal rulemaking portal at *www.regulations.gov*.

Comments may be submitted on the 2023 Revised Methodology, identified by Docket number SBA–2023–0015, by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov* (follow the instructions for submitting comments), (2) Mail/Hand Delivery/Courier: U.S. Small Business Administration, Khem R. Sharma, Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416, or (3) Email at *sizestandards@sba.gov*.

SBA will post all comments on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Khem R. Sharma, Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Chief, Office of Size Standards, (202) 205–7189 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance programs, SBA establishes small business definitions (commonly referred to as ''size standards'') for private sector industries in the United States. Under the Small Business Act, the SBA's Administrator has authority to establish small business size standards for Federal Government programs. SBA's existing size standards use two primary measures of business size: average annual receipts and average number of employees. Financial assets and refining capacity are used as size measures for a few specialized industries. In addition, the SBA's Small Business Investment Company (SBIC), 7(a), Certified Development Company (CDC/504) Programs determine small business eligibility using either the industry based size standards or tangible net worth and net income based alternative size standards. Presently, there are 102 different size standards, covering 978 industries and 14 exceptions. Of these, 505 are based on average annual receipts, 483 on number of employees (one of which also includes barrels per calendar day total refining capacity), and four on average assets.

The Jobs Act (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010) requires SBA to review, every five years, all size standards and make necessary adjustments to reflect market conditions. SBA completed the first five-year review of size standards under the Jobs Act in early 2016 [1] and completed the second five-year review of size standards in early 2023.[2] SBA will begin the next (third) five-year review of size standards in the near future.

The goal of SBA's size standards review is to determine whether its existing small business size standards reflect the current industry structure and Federal market conditions and revise them if the latest available data suggests that revisions are warranted. The Small Business Act (the Act), 15 U.S.C. 632(a) (Pub. L. 85–536, 67 Stat. 232, as amended) requires that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries. SBA evaluates the structure of each industry in terms of four economic characteristics or factors, namely average firm size, average assets size as a proxy of startup costs and entry barriers, the four-firm concentration ratio as a measure of industry competition, and size distribution of firms using the Gini coefficient (13 CFR 121.102(a)). Besides industry structure, SBA also examines the impact of an existing size standard as well as the potential impact of a revised size standard on small business participation in Federal contracting as an additional primary factor when establishing or reviewing the size standards. SBA generally considers these five factors—average firm size, average assets size, four-firm concentration ratio, Gini coefficient, and small business participation in Federal contracting—to be the most important factors in determining an industry's size standard. The 2023 Revised Size Standards Methodology White Paper provides a detailed description of evaluation of these factors (including relevant data sources) and derivation of size standards based on the results.

SBA also periodically adjusts all monetary based standards for inflation. In accordance with SBA's regulations

[1] See Report on the First Five-Year Comprehensive Review of Size Standards at *https://www.sba.gov/sites/sbagov/files/2023-09/Report%20on%20the%20First%205-Year%20Comprehensive%20Size%20Standards%20Review-508F.pdf*.

[2] See Report on the Second Five-Year Comprehensive Review of Size Standards at *https://www.sba.gov/sites/sbagov/files/2023-07/SBA%27s%20Report%20on%20the%20Second%205%20Year%20Review%20of%20Size%20Standards_Final.pdf*.

(13CFR 121.102(c)) and rulemaking (67 FR 3041; January 23, 2002), an adjustment to size standards for inflation is made at least once every five years. In response to higher than normal rates of inflation, some past inflation adjustments have been made on more frequent intervals. For example, in response to ongoing higher than normal inflation, SBA issued an out-of-cycle inflation adjustment to monetary based size standards on November 17, 2022 (87 FR 69118). The SBA size standards methodology also explains how it adjusts monetary based size standards for inflation. SBA also updates its size standards, every five years, to adopt the Office of Management and Budget's (OMB) quinquennial NAICS revisions to its table of small business size standards. Effective October 1, 2022, SBA adopted the OMB's 2022 NAICS revisions (86 FR 72277; December 21, 2021) for its table of small business size standards (87 FR 59240; September 29, 2022). The white paper also explains the SBA procedures for adopting updated NAICS definitions for the table of size standards.

Section 3(a) of the Act provides the SBA's Administrator (Administrator) with authority to establish small business size standards for Federal Government programs. The Administrator has discretion to determine precisely how SBA should establish small business size standards. The Act and its legislative history highlight three important considerations for establishing size standards. First, as stated earlier, size standards should vary from industry to industry according to differences among industries. 15 U.S.C. 632(a)(3). Second, a firm that qualifies as small under the SBA's size standard shall not be dominant in its field of operation. 15 U.S.C. 632(a)(1). Third, pursuant to 15 U.S.C. 631(a), the policies of the Agency should assist small businesses as a means of encouraging and strengthening their competitiveness in the economy. These three considerations continue to form the basis for the SBA's methodology for establishing, reviewing, or revising small business size standards.

The 2023 Revised Methodology, available for review and comment on the SBA's website at *www.sba.gov/size,* as well as at *www.regulations.gov,* describes in detail how SBA establishes, evaluates, and adjusts its small business size standards pursuant to the Act and related legislative guidelines. Specifically, the document provides a brief review of the legal authority and early legislative and regulatory history of small business size standards, followed by a detailed description of the size standards analysis. Below, SBA provides a brief summary of the revisions to SBA's size standards methodology, which are described in greater detail in the 2023 Revised Methodology.

Revisions to SBA's Size Standards Methodology

SBA's 2023 Revised Methodology describes various changes and revisions to the 2019 Methodology and provides a detailed history of changes to SBA's methodology for evaluating size standards over the years. In the past, including the first five-year review of size standards under the Jobs Act, to determine an overall size standard for each industry, SBA compared the characteristics of each industry with the average characteristics of a group of industries associated with an ''anchor'' size standard. For example, in the first five-year review of size standards, $7 million (now $9 million due to the inflation adjustments in 2014, 2019, and 2022) was considered the ''anchor'' for receipts based size standards and 500 employees was considered the ''anchor'' for employee based size standards. If the characteristics of a specific industry under review were similar to the average characteristics of industries in the anchor group, SBA generally adopted the anchor size standard for that industry. If the specific industry's characteristics were significantly higher or lower than those for the anchor group, SBA assigned a size standard that was higher or lower than the anchor.

In response to public comments received during the first five-year review of size standards concerning SBA's size standards methodology, section 3(a)(7) of the Act that limits the SBA's ability to create common size standards by grouping industries below the four-digit NAICS level, and its own review of the methodology, in the 2019 Methodology, SBA replaced the ''anchor'' approach with the ''percentile'' approach, as a basis of evaluating industry factors and deriving a size standard for each industry factor for each industry.[3] Under the ''percentile'' approach, for each factor, an industry is ranked and compared with the 20th percentile and 80th percentile values of that factor among the industries sharing the same measure of size standards (*i.e.,* receipts or employees). Combining that result with the 20th percentile and 80th percentile values of size standards among the industries with the same measure of size standards, SBA computes a size standard supported by each industry factor for each industry, then computes a weighted average of the resulting supported size standards to obtain an overall size standard for each industry.

In the 2023 Revised Methodology, SBA is maintaining the ''percentile'' approach as a basis of evaluating industry factors and deriving size standards for each industry factor for each industry; however, based on its review of the current methodology, SBA is proposing two major changes to its size standards methodology.

The first major change is to replace the current approach to account for the Federal contracting factor with the disparity ratio approach. Under the 2019 Methodology SBA defines the Federal contracting factor in terms of the difference between the small business share of total contract obligations and the small business share of industry' receipts. If the small business share of an industry total receipts exceeds the small business share of total contract obligations by ten percentage points or more, all else being the same, SBA would increase that industry's current size standard by certain amount depending on the amount of that difference. If that difference is less than ten percentage points, SBA considers that the current size standard is sufficient with respect to the Federal contracting factor.

Under the disparity ratio approach, SBA computes a disparity ratio as a ratio (instead of the difference) between the small business share of contract obligations (utilization ratio) and the small business share of industry receipts (availability ratio). SBA also computes a second disparity ratio as a ratio between small business share of the number of contracts (utilization ratio) and the share of small firms in the total population of firms that are willing, ready, and able to bid on and perform Federal contracts (availability ratio).

If an industry's disparity ratio is less than 0.8, SBA would assume that small businesses are either materially underrepresented (*i.e.,* the disparity ratio is 0.5 or greater and less than 0.8) or substantially underrepresented (*i.e.,* the disparity ratio is less than 0.5) in the Federal market under that industry's current size standard and would generally propose to increase the current size standard. If an industry's disparity ratio is 0.8 or higher, small businesses are considered overrepresented (*i.e.,* the disparity ratio is 0.8 or higher and less than 1.2) or

[3] For a detailed justification for replacement of the ''anchor'' approach to size standards analysis with the ''percentile'' approach and a detailed description of the percentile approach, *see* the SBA's 2019 Size Standards Methodology White Paper, available at *www.sba.gov/size.*

substantially overrepresented (*i.e.,* the disparity ratio is 1.2 or higher) in the Federal market in that industry under the current size standard, and the size standard is maintained at the current level.

The second proposed major change is to replace the 20th percentile and 80th percentile values of industry factors for evaluating size standards at subindustry levels (''exceptions'') from those calculated based on the Economic Census data with those calculated using The Federal Procurement Data System—Next Generation (FPDS) and The System for Award Management (SAM) data.

SBA is proposing these changes in order to refine and improve its analysis of Federal contracting data used in the evaluation of industry size standards. These changes are also in response to public comments received during the second five-year review of size standards that pertained to Federal contracting trends generally. Although SBA did not specifically seek comments to the 2019 Methodology as part of the series of proposed rules issued to review size standards under the second five year review,[4] SBA notes that, a number of commenters to SBA's proposed rules expressed positions both for and against SBA's proposed size standards based on Federal contracting trends, data, or analysis.[5] Thus, given the demonstrated relevance of Federal contracting trends to small businesses, SBA believes that it is important to continually review and adjust its methodology for evaluating Federal contracting data to ensure its analysis accurately captures the varying impact of Federal contracting trends by industry.

To determine how the above changes in the methodology would affect size standards across various industries and sectors, SBA derived the new size standards for all industries averaging $20 million or more in Federal contract dollars annually (excluding Sectors 42 and 44–45) using the 2019 Methodology and the disparity ratio approach of defining the Federal contracting factor. Overall, the calculated size standards were quite similar between the two approaches when compared to the existing size standards, with size standards increasing for some industries and decreasing for others under both approaches.

SBA believes that using FPDS–NG and SAM data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for the exceptions, instead of using the percentiles from the Economic Census, will promote consistency in its analysis of the exceptions by ensuring that the percentile values and factor values for each exception are in comparable terms. Specifically, SBA has found that for most industries, the average firm size of businesses participating in Federal contracting is generally larger than the average firm size of businesses represented in the Economic Census. There are also inconsistencies in data reporting between SAM/FPDS–NG data and the Economic Census, which SBA will address by adopting the revised approach. Thus, SBA believes that using FPDS–NG and SAM to obtain the percentile values of industry factors for the exceptions will better reflect the varying economic characteristics of the underlying industries. The full results of SBA's impact analysis as well as a detailed description of the major changes to SBA's evaluation of size standards are included in the 2023 Revised Methodology.

In the 2023 Revised Methodology, SBA is also updating the minimum and maximum size standard levels based on current minimum and maximum size standard levels. The minimum size standard generally reflects the size a small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts. On the other hand, the maximum size standard represents the level above which businesses, if qualified as small, would cause significant competitive disadvantage to smaller businesses when accessing Federal assistance. SBA will not generally propose or adopt a size standard that is either below the minimum or above the maximum level, even though the calculations might yield values below the minimum or above the maximum level.

With respect to receipts based size standards, SBA is proposing $8 million and $47 million, respectively, as the minimum and maximum size standard levels (except for most agricultural industries in Subsectors 111 and 112). These levels reflect the current minimum and the current maximum of receipts based size standards. As in the 2019 Methodology, the latest industry data from the 2017 Census of Agriculture suggests that $8 million minimum and $47 million maximum size standard levels would be too high for agricultural industries in Subsector 111 and Subsector 112. Accordingly, SBA is proposing $2.25 million and $5.5 million, respectively, as the minimum and maximum size standard levels for agricultural industries in Subsectors 111 and 112 (excluding NAICS 112112 and NAICS 112310). These levels represent the current minimum and current maximum levels of size standards in Subsectors 111 and 112 (excluding NAICS 112112 and NAICS 112310).[6]

Regarding employee based size standards for manufacturing and other industries that have employee based size standards (excluding Wholesale and Retail Trade), SBA's proposed 250-employee minimum and 1,500-employee maximum are the current minimum and maximum employee based size standards among those industries. For employee based size standards for Wholesale Trade and Retail Trade industries, the proposed minimum and maximum size standards levels are 50 employees and 250 employees, respectively.[7]

SBA is also updating the percentile values, derived from the latest 2017 Economic Census and other industry data, used to evaluate the structure of each industry in terms of the four economic characteristics or factors, namely average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient. As explained in

[4] See Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction (85 FR 62239; October 2, 2020), Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing (85 FR 62372; October 2, 2020), Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services (85 FR 72584; November 13, 2020), Small Business Size Standards: Education Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services (85 FR 76390; November 27, 2020), and Small Business Size Standards: Wholesale Trade and Retail Trade (86 FR 28012; May 25, 2021), Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade (87 FR 24752; April 26, 2022). Comments available at *www.regulations.gov*.

[5] Prior to finalizing the 2019 Methodology for revising size standards under the second five-year review, SBA issued a notification in the April 27, 2018, issue of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the 2019 Methodology. SBA considered all public comments in finalizing the 2019 Methodology. For a summary of comments and SBA's responses, refer to the SBA's April 11, 2019, **Federal Register** notification (84 FR 14587).

[6] NAICS 112112 (Cattle Feedlots) and NAICS 112310 (Chicken Egg Production) currently have a size standard of $22 million and $19 million, respectively, and will be subjected to the $8 million minimum and $47 million maximum size standards proposed for other industries with receipts based size standards.

[7] Current employee based size standards for the wholesale and retail trade industries range from 100 employees to 250 employees. However, as in the 2019 Methodology, SBA is proposing a lower 50-employee level as the minimum employee-based size standard to account for differences among industries more accurately.

the 2023 Revised Methodology, SBA ranks industries by size standard types in terms of the four industry factors and in terms of the existing size standards, then computes the 20th percentile and 80th percentile values for both. SBA then evaluates each industry by comparing its value for each industry factor to the 20th percentile and 80th percentile values for the corresponding factor for industries under a particular type of size standard. The updated 20th percentile and 80th percentile values for the four factors for receipts based and employee based size standards are found in Table 5 and Table 6 of the 2023 Revised Methodology, respectively; the updated 20th percentile and 80th percentile values of size standards are found in Table 7.

Request for Comments

SBA welcomes comments from the public on a number of issues concerning its size standards methodology. Specifically, SBA invites feedback and suggestions on the following:

- Should SBA establish size standards that are higher than industry's entry-level business size? SBA generally sets size standards higher than the entry-level business size to enable small businesses to compete against others of their size and considerably larger businesses for Federal contracts set aside for small businesses. It is important that small businesses be able to apply for and be eligible for SBA's various business development programs that have additional requirements, such as a minimum number of years in business to qualify for its 8(a) Business Development Program. This precludes setting size standards at too low a level or at the entry-level size. Additionally, establishing size standards at the industry entry-level firm size would cause small businesses to outgrow their eligibility very quickly, thereby lacking sufficient cushion or experience to succeed outside of the small business market. Finally, size standards must be above the entry-level size to ensure small businesses have necessary resources and capabilities to be able to perform and meet Federal Government contracting requirements.
- Should there be a ceiling beyond which a business concern cannot be considered as small? In other words, should there be a maximum size standard? SBA has not increased its employee based standards beyond the 1,500-employee level. However, receipts based size standards have gradually increased over time due to inflationary adjustments and the highest receipts based size standard stands at $47 million today. This is a policy decision that the Agency should make—is there a size beyond which a business is not small?
- Should SBA consider adjusting employee based size standards for labor productivity growth or increased automation? Just as firms in industries with receipts based standards may lose small business eligibility due to inflation, firms in industries with employee based standards may gain eligibility due to improvement in labor productivity and technical change.
- Should SBA consider lowering its size standards generally? SBA receives periodic comments from the public that its standards are too high in certain industries or for certain types of Federal contracting opportunities. The comments generally concern the competitive edge that large small businesses have over the ''truly small businesses'' (a phrase heard frequently from commentators). On the other hand, SBA also receives comments from advanced small businesses that its size standards are too small to qualify for Federal contracting opportunities and other Federal small business assistance. This has always been a challenging issue, one that SBA has had to deal with over the years. SBA's size standards appear too large to the smallest of small businesses while more advanced small businesses often request even higher size standards.
- In response to the distressed economic environment in the aftermath of the 2007–2009 Great Recession, in the first five-year review of size standards, SBA adopted a policy of not lowering size standards even though the data supported lowering them. Similarly, in response to the COVID–19 pandemic and its impacts on small businesses and the overall economy, during the second five-year review of size standards, SBA adopted a similar policy of not lowering any size standards even if the analytical results supported lowering them. Should SBA lower size standards regardless of prevailing economic conditions when the analytical results support lowering them or should it consider the prevailing economic environment when deciding on whether to revise size standards?
- Should SBA adopt new disparity ratio approach to evaluating small business participation in the Federal market, which will replace the Federal contracting factor the Agency used in the past. Should SBA adopt the results from the power analyses of the disparity ratios? Since only a very few industries were impacted by the power analyses, SBA has decided to not use the results from the power analyses.
- SBA is proposing to use FPDS–NG and SAM data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for the NAICS exceptions, instead of using the percentiles from the Economic Census. Should SBA continue using the Economic Census data to obtain the 20th percentile and 80th percentile values of industry factors for evaluating size standards for exceptions or should it start using FPDS–NG and SAM data to calculate 20th and 80th percentile values of industry factors for evaluating exceptions?
- Should size standards vary from program to program? In other words, should SBA establish one set of standards for SBA financial programs, another for Federal procurement, or yet another for other Federal programs? SBA had, in the 1980s, established different size standards for different programs. The result had been that some firms were small for some programs and large for others. Such size standards were very confusing to users and caused unnecessary and unwanted complexity in their application. The statutory guidance encourages an industry-by-industry analysis and not a program-by-program analysis when developing small business size definitions. While the characteristics and needs of a particular SBA program may necessitate the deviation from the uniform size standards, the Agency will continue its general policy of favoring one set of size standards for all programs. However, SBA has established 14 special size standards for some activities (commonly referred to as ''exceptions'') within certain industries for Federal Government purposes. Similarly, for industries in Wholesale Trade and Retail Trade, SBA has established industry specific size standards for SBA's loan and other Federal nonprocurement programs and a common 500-employee size standard for Federal procurement under the nonmanufacturer rule. Additionally, for SBA's SBIC, 7(a), and CDC/504 Programs businesses can qualify either based on industry specific size standards for their primary industries or based on a tangible net worth and net income based alternative size standard.
- Should size standards apply nationally or should they vary geographically? The data SBA obtains from the Economic Census are national data. While the Economic Census does publish a Geographic Series of the data, application of those data to evaluating and establishing size standards would be cumbersome and time consuming at best, resulting in a very complex set of size standards that would likely be

unusable. For example, in Federal contracting, how would a contracting officer set the size standard on a contracting opportunity? Would it depend on the contracting officer's location, on the location of the Agency's headquarters, or on the place of delivery of the product or service? What about multiple delivery locations? On the location of the prospective contractor? On the location of the prospective contractor's headquarters? What about subcontractors, since size standards apply to subcontracts as well? The same questions could be asked about them, which would affect a prime contractor's ability to bid. Would this encourage firms to relocate based upon perceived favorable size standards? That would defeat the purpose behind geographic distinctions. The undue complexity and resulting confusion would render geographically based size standards unusable, for all practical purposes.

- Are there alternative approaches that SBA should consider for determining small business size standards?
- How have SBA's latest size standards revisions impacted competition in general and within a specific industry?
- Are there alternative or additional factors or data sources that SBA should consider when establishing, reviewing, or revising size standards?
- Does SBA's current approach to establishing or modifying small business size standards make sense in the current economic environment?

SBA encourages the public to review and comment on the Revised Methodology, which is available at *www.sba.gov/size* as well as at *www.regulations.gov.* SBA will thoroughly evaluate and consider all comments and suggestions when finalizing the 2023 Revised Methodology, which the Agency will apply in the forthcoming, third five-year review of size standards as required by the Jobs Act.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–27053 Filed 12–8–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2238; Project Identifier MCAI–2023–00698–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Leonardo S.p.a. Model A109C, A109E, A109K2, A109S, and AW109SP helicopters. This proposed AD was prompted by reports of loose tail rotor duplex bearing locking nuts, possibly caused by improper installation. This proposed AD would require disassembling certain tail rotor duplex bearings and reassembling them in accordance with updated service information. This proposed AD would also prohibit installing certain tail rotor duplex bearings. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. 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 January 25, 2024.

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–2023–2238; 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, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2023–2238.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@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–2023–2238; Project Identifier MCAI–2023–00698–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each

page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0105, dated May 23, 2023 (EASA AD 2023–0105), to correct an unsafe condition on Leonardo S.p.A. Model A109C, A109E, A109K2, A109LUH, A109S, and AW109SP helicopters. EASA advises of reports of loosening of the tail rotor duplex bearing locking nut. Subsequent investigations identified incorrect accomplishment of the assembly and continued maintenance instructions of the tail rotor duplex bearing housing and slider group as the most likely root cause of that loosening. The FAA is proposing this AD to detect and address the incorrect assembly of the tail rotor duplex bearing.

This unsafe condition, if not addressed, could lead to failure of the tail rotor function, possibly resulting in loss of control of the helicopter. See EASA AD 2023–0105 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0105 requires replacing certain parts through the disassembly and reassembly of the tail rotor duplex bearing and the pitch change slider assembly. EASA AD 2023–0105 also prohibits installing certain parts on any helicopter.

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

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0105, described previously, as incorporated by reference, 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 EASA AD 2023–0105.''

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 EASA AD 2023–0105 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0105 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0105 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0105. Service information referenced in EASA AD 2023–0105 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–2238 after the FAA final rule is published.

Differences Between This Proposed AD and EASA AD 2023–0105

EASA AD 2023–0105 applies to Model A109LUH helicopters, however, this proposed AD would not because that model is not FAA type-certificated.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 160 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. The FAA estimates the following costs to comply with the proposed AD.

Disassembly and reassembly of the tail rotor housing and slider assembly would take approximately 8 work-hours for an estimated cost of $680 per helicopter and $108,800 for the U.S. fleet.

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:

Leonardo S.p.a.: Docket No. FAA–2023–2238; Project Identifier MCAI–2023–00698–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 25, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Leonardo S.p.a. Model A109C, A109E, A109K2, A109S, and AW109SP helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6400, Tail Rotor System.

(e) Unsafe Condition

This AD was prompted by reports of loose tail rotor duplex bearing locking nuts, possibly caused by improper installation. The FAA is issuing this AD to detect and address the incorrect assembly of the tail rotor duplex bearing. The unsafe condition, if not addressed, could lead to failure of the tail rotor function, possibly resulting in loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

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, European Union Aviation Safety Agency (EASA) AD 2023–0105, dated May 23, 2023 (EASA AD 2023–0105).

(h) Exceptions to EASA AD 2023–0105

(1) Where EASA AD 2023–0105 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2023–0105 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2023–0105 specifies to ''discard'' parts; for this AD, replace that text with ''remove from service.''

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0105.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0105 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0105, dated May 23, 2023.

(ii) [Reserved]

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

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 4, 2023.

Victor Wicklund,

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

[FR Doc. 2023–26934 Filed 12–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2184; Airspace Docket No. 23–ASO–49]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; St. Petersburg, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and Class E surface airspace for St. Petersburg-Clearwater International Airport, St. Petersburg, FL. This action would increase the radius and amend the verbiage in the Class D and Class E descriptions.

DATES: Comments must be received on or before January 25, 2024.

ADDRESSES: Send comments identified by FAA Docket No. [FAA–2023–2184] and Airspace Docket No. [23–ASO–49] using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions to send your comments electronically.

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Stephen Sutcavage, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5649.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class D and E airspace in St. Petersburg, FL. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: Per 5 U.S.C. 553(c), the DOT solicits comments from the public to inform its rulemaking process better. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded online at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except on federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class D and Class E airspace designations are published in Paragraphs 5000, 6004, and, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend Class D airspace and Class E surface airspace for St. Petersburg- Clearwater International Airport, St. Petersburg, FL, as an airspace evaluation determined an update for this airport necessary. This action would increase the Class D radius of the airport to 4.9-miles (previously 4.2-miles). This action would also increase the Class E radius of the airport to 4.9 miles (previously 4.2 miles). This action would also replace Notice to Airmen with Notice to Air Missions in the appropriate airspace descriptions. Controlled airspace is necessary for the area's safety and management of instrument flight rules (IFR) operations.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'', prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D St. Petersburg, FL [Amended]

St. Petersburg-Clearwater International Airport, FL

(Lat. 27°54′31″ N, long. 82°41′11″ W)

That airspace extending upward from the surface to and including 1,600 feet MSL within a 4.9-mile radius of St. Petersburg-Clearwater International Airport, excluding that portion within the Tampa International Airport, FL, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

ASO FL E2 St. Petersburg, FL [Amended]

St. Petersburg-Clearwater International Airport, FL
(Lat. 27°54′31″ N, long. 82°41′11″ W)

That airspace is within a 4.9-mile radius of St. Petersburg-Clearwater International Airport, excluding that portion within the Tampa International Airport, FL, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in College Park, Georgia, on December 5, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–27086 Filed 12–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2275; Airspace Docket No. 23–AEA–22]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Lewisburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace, Class E airspace designated as an extension to a Class D surface, and Class E airspace extending upward from 700 feet above the surface area for Greenbrier Valley Airport, Lewisburg, WV. This action would amend verbiage in the descriptions, as well as adding additional extensions to the northeast and southwest of the airport.

DATES: Comments must be received on or before January 25, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2275 and Airspace Docket No. 23–AEA–223261 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions to send your comments electronically.

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file all comments it receives in the docket and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), the DOT solicits comments from the public to inform its rulemaking process better. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation

Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Incorporation by Reference

Class D and Class E airspace designations are published in Paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class D airspace and Class E airspace designated as an extension to a Class D surface area by:

- Removing the city name from the airport header.
- Replacing Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement.
- Removing the BUSHI NDB from the description, as it is unnecessary in describing the airspace.
- Add a northeast extension and amend the southwest extension.

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface area by removing the BUSHI NDB from the description, as it is unnecessary in describing the airspace.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis per FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' before any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA WV D Lewisburg, WV [Amended]

Greenbrier Valley Airport, WV
(Lat. 37°51′33″ N, long. 80°23′58″ W)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 4-mile radius of Greenbrier Valley Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be published continuously in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to Class D or E Surface Area.

* * * * *

AEA WV E4 Lewisburg, WV [Amended]

Greenbrier Valley Airport, WV
(Lat. 37°51′33″ N, long. 80°23′58″ W)

That airspace extending upward from the surface within 2 miles on each side of the 216° bearing of Greenbrier Valley Airport, extending from the 4-mile radius of the airport to 6.8 miles southwest of the airport and from the 009° bearing of the airport to the 044° bearing of the airport, extending from the 4-mile radius to 6.8-miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be published continuously in the Chart Supplement.

* * * * *

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

* * * * *

AEA WV E5 Lewisburg, WV [Amended]

Greenbrier Valley Airport, WV
(Lat. 37°51′33″ N, long. 80°23′58″ W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Greenbrier Valley Airport and within 4.4 miles on each side of the 216° bearing of the airport, extending from the 12-mile radius to 16 miles southwest of the airport.

* * * * *

Issued in College Park, Georgia, on December 1, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–27083 Filed 12–8–23; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1264

[CPSC Docket No. 2011–0074]

Safety Standard Addressing Blade-Contact Injuries on Table Saws; Notice of Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of comment period.

SUMMARY: On November 1, 2023, the Consumer Product Safety Commission (Commission or CPSC) published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPR) to promulgate a consumer product safety standard to address blade-contact injuries on table saws. The SNPR invited the public to submit written comments during a 60-day comment period beginning on the SNPR publication date and ending on January 2, 2024. In response to a request for an extension of the comment period, the Commission is extending the comment period to February 1, 2024.

DATES: The comment period for the proposed rule published November 1, 2023, at 88 FR 74909, is extended. Submit comments by February 1, 2024.

ADDRESSES: Submit comments on the proposed rule, identified by Docket No. CPSC–2011–0074, by any of the following methods:

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

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

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number, CPSC–2011–0074, into the ''Search'' box, and follow the prompts.

SUPPLEMENTARY INFORMATION: On October 18, 2023, the Commission voted to publish an SNPR in the **Federal Register**, to promulgate a consumer product safety standard for blade-contact injury hazards associated with table saws. The SNPR published on November 1, 2023, with a 60-day comment period that closes on January 2, 2024. 88 FR 74909.

On November 22, 2023, Susan Orenga, Executive Manager, Power Tool Institute, Inc. (PTI), submitted a request to the Commission to extend the comment period by 60 days. The Commission has considered this request to extend the comment period. To provide additional time for stakeholders to prepare comments for the rulemaking, the Commission will grant an extension of the comment period to February 1, 2024.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–27133 Filed 12–8–23; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1408

[CPSC Docket No. 2019–0020]

Safety Standard for Residential Gas Furnaces and Boilers; Notice of Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of comment period.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) published in the **Federal Register** a notice of proposed rulemaking (NPR) to promulgate a consumer product safety standard to address an unreasonable risk of injury and death associated with residential gas furnaces and boilers. The NPR invited the public to submit written comments during a 60-day comment period. In response to requests for an extension of the comment period, the Commission is extending the comment period.

DATES: The comment period for the proposed rule published October 25, 2023, at 88 FR 73272, is extended. Submit comments by January 25, 2024.

ADDRESSES:

Written Comments: Comments related to the Paperwork Reduction Act aspects of the proposed rule should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.*

Other written comments in response to the proposed rule, identified by Docket No. CPSC–2019–0020, may be submitted 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. CPSC typically does not accept comments submitted by email, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

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

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided to: *www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/written submissions.

Docket for NPR: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* insert the docket number CPSC–2019–0020 into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Ronald A. Jordan, Directorate for Engineering Sciences, Mechanical Engineering, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2219; *rjordan@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On October 11, 2023, the Commission voted to publish an NPR in the **Federal Register**, to promulgate a consumer product safety standard for carbon monoxide hazards associated with gas furnaces and boilers. The NPR published on October 25, 2023, with a 60-day comment period that closes on December 26, 2023 (88 FR 73272).

The Commission has received two requests to extend the comment period. On November 3, 2023, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) requested the public comment period be extended for an additional 60 days to February 26, 2024. On November 17, 2023, the American Gas Association (AGA), American Public Gas Association (APGA), and National Propane Gas Association

(NPGA) submitted a similar request to extend the public comment period for the NPR by 60 days. The Commission has considered these requests to extend the comment period. To provide additional time for stakeholders to prepare comments for the rulemaking, the Commission will grant an extension of the comment period to January 25, 2024.[1]

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–27128 Filed 12–8–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AS02

Loan Guaranty: Minimum Property Requirements for VA-Guaranteed and Direct Loans

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is requesting public comment on the minimum property requirements (MPRs) for VA-guaranteed and direct loans. VA will consider information received in response to this advance notice of proposed rulemaking (ANPRM) in implementing the Improving Access to the VA Home Loan Benefit Act of 2022 (the Act). The Act requires VA to consider making changes to MPRs in prescribing updated regulatory requirements regarding appraisals. This ANPRM seeks public input to better understand areas for improvement in MPRs, including whether VA should consider adopting an approach that aligns with other industry-wide property standards already in existence.

DATES: Comments must be received on or before February 9, 2024.

ADDRESSES: Comments must be submitted through *www.regulations.gov*. Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov*. VA will not post on *www.regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Assistant Director for Regulations, Legislation, Engagement and Training, and Terry Rouch, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: VA must ensure that any property financed through a VA-guaranteed or direct loan is suitable for dwelling purposes.[1] Additionally, any loan for either the purchase or construction of a residential property, in which construction was completed within one year of the loan, must meet or exceed minimum requirements for planning, construction, and general acceptability, as prescribed by VA.[2] Also, any direct housing loan made by VA under the Native American Direct Loan (NADL) program must meet minimum requirements for planning, construction, improvement, and general acceptability, as prescribed by VA.[3]

In 38 CFR 36.4351 and 36.4527(c)(4), VA implemented the above noted statutory requirements, and in the Lenders Handbook, VA maintains a list of MPRs.[4] The following table reflects that list.[5]

TABLE 1—VA PAMPHLET 26–7, LENDERS HANDBOOK, CHAPTER 12—MINIMUM PROPERTY REQUIREMENTS

Topic	Topic name	Topic	Topic name
1	Minimum Property Requirement Procedures.	23	Heating.
2	Marketable Real Estate Entity.	24	Leased Mechanical Systems and Equipment.
3	Space Requirements.	25	Alternative Energy Equipment.
4	Access.	26	Roof Covering.
5	Encroachments.	27	Attics.
6	Drainage and Topography.	28	Crawl Spaces.
7	Geological or Soil Instability, Subsidence, and Sinkholes.	29	Basements.
8	Special Flood Hazard Area.	30	Swimming Pools.
9	Coastal Barrier Resources System.	31	Burglar Bars.
10	Lava Flow Hazard Areas.	32	Lead-Based Paint.
11	Non-Residential Use.	33	Wood Destroying Insects/Fungus/Dry Rot.
12	Zoning.	34	Radon Gas.
13	Local Housing/Planning Authority Code Enforcement.	35	Potential Environmental Problem.
14	Utilities.	36	Stationary Storage Tanks.
15	Water Supply and Sanitary Facilities.	37	Mineral, Oil and Gas Reservations or Leases.
16	Individual Water Supply.	38	High Voltage Electric Transmission Lines.
17	Individual Sewage Disposal.	39	High Pressure Gas and Liquid Petroleum Pipelines.
18	Shared Wells.	40	Properties Near Airports.
19	Community Water Supply/Sewage Disposal Requirements.	41	Manufactured Home Classified as Real Estate.
20	Hazards.	42	Modular Homes.
21	Defective Conditions.	43	Energy Conservation and Sustainability.
22	Mechanical Systems.	44	Requests for Waiver of MPR Repairs.

[1] The Commission voted 4–0 to approve publication of this notice of extension of comment period.

[1] 38 U.S.C. 3710(b)(4); *see also* 38 U.S.C. 3711.

[2] 38 U.S.C. 3704(a).

[3] 38 U.S.C. 3762(c)(2).

[4] Lenders Handbook, VA Pamphlet 26–7, *https://www.benefits.va.gov/warms/pam26_7.asp*.

[5] *Id.*

In addition to MPRs being a legal requirement, they also serve as a safeguarding function by exposing potential defects or maintenance issues that could have a significant effect on a property's value.

Section 3 of the Act [6] directs the Secretary to consider making changes applicable to MPRs.[7] Therefore, VA is issuing this ANPRM to request public comment as the agency considers regulatory amendments pertaining to MPRs. While VA welcomes all comments regarding MPRs, VA is particularly interested in hearing from the public on the below noted questions.

Questions for Comment

(1)(a) What are the advantages and/or disadvantages of VA MPRs noted in the above table as compared with similar requirements found in other Federal housing programs and conventional sources of financing (*e.g.,* property condition requirements)?

(b) What policies or processes specific to VA MPRs could be streamlined, modified, or eliminated to enhance your experience with the VA home loan program?

(c) Please also provide any general suggestions for improvement or comments on the current VA MPRs.

(2)(a) Should VA replace the above noted VA MPRs with the property condition ratings outlined in Fannie Mae's *Selling Guide* or Freddie Mac's *Single-Family Seller/Servicer Guide,* and included in the Uniform Appraisal Dataset (UAD) [8]

(b) If VA were to guarantee or make loans only on properties with a condition rating of C1, C2, C3, or C4, either based on the initial appraisal or following repairs, what would be the advantages and/or disadvantages for a borrower? For VA and taxpayers? For lenders and servicers?

(c) Could the below noted property condition ratings be used by VA in another way to determine MPRs?

By way of background, the UAD defines all fields required for an appraisal submission for specific appraisal forms (*e.g.,* Fannie Mae Form 1004) and standardizes definitions and responses for a key subset of fields. When completing an appraisal that conforms to the UAD, the appraiser assigns one of the standardized condition ratings pursuant to the definitions in the Fannie Mae Selling Guide or Freddie Mac Seller/Servicer Guide and presented in Table 2 below. These ratings identify the condition of the improvements for the subject property and comparable sales.

VA appraisers utilize industry-standard forms to complete appraisals for VA-guaranteed loans. As such, VA already collects information regarding the UAD property condition rating as part of a VA appraisal.[9] As VA considers how to streamline the appraisal process, one option could be to utilize this existing appraisal information to determine whether a property is suitable for dwelling purposes rather than provide appraisers with a lengthy list of specific MPRs to evaluate. In reviewing the UAD property condition ratings, VA believes that properties rated C1 through C4 would best align with VA's statutory requirement and existing MPRs, but is open to public feedback on this issue.

TABLE 2—UNIFORM APPRAISAL DATASET (UAD) PROPERTY CONDITION RATINGS

Rating	Description in Fannie Mae Selling and Freddie Mac Seller/Servicer Guides
C1	The improvements have been very recently constructed and have not previously been occupied. The entire structure and all components are new and the dwelling features no physical depreciation.
C2	The improvements feature no deferred maintenance, little or no physical depreciation, and require no repairs. Virtually all building components are new or have been recently repaired, refinished, or rehabilitated. All outdated components and finishes have been updated and/or replaced with components that meet current standards. Dwellings in this category either are almost new or have been recently completely renovated and are similar in condition to new construction.
C3	The improvements are well-maintained and feature limited physical depreciation due to normal wear and tear. Some components, but not every major building component, may be updated or recently rehabilitated. The structure has been well-maintained.
C4	The improvements feature some minor deferred maintenance and physical deterioration due to normal wear and tear. The dwelling has been adequately maintained and requires only minimal repairs to building components/mechanical systems and cosmetic repairs. All major building components have been adequately maintained and are functionally adequate.
C5	The improvements feature obvious deferred maintenance and are in need of some significant repairs. Some building components need repairs, rehabilitation, or updating. The functional utility and overall livability are somewhat diminished due to condition, but the dwelling remains useable and functional as a residence.
C6	The improvements have substantial damage or deferred maintenance with deficiencies or defects that are severe enough to affect the safety, soundness, or structural integrity of the improvements. The improvements are in need of substantial repairs and rehabilitation, including many or most major components.

(3) VA is interested in hearing how the current MPRs may be impacting certain groups of veteran borrowers, including those traditionally underserved in the housing finance industry. As VA considers changes to the MPRs, VA is exploring how best to ensure all eligible individuals for the VA home loan benefit are served.

(a) Please describe any needs of groups of veterans who might be underserved due to the current MPRs and how the VA home loan program could address those needs.

(b) Please describe any VA MPRs that might restrict utilization by any group(s) of veterans that are traditionally underserved in the housing finance industry. What changes could VA make to its MPRs to encourage more utilization by these groups?

(4) VA is interested in hearing how changes to the MPRs might affect lender participation which, in turn, could affect a veteran borrower's access to the benefit.

(a) As an interested stakeholder, in your opinion, what type(s) of MPRs are helpful in protecting veteran borrowers, lenders, servicers, and VA?

(b) What type(s) of changes related to MPRs would encourage more lenders

[6] Public Law 117–308, 136 Stat. 4393.

[7] *Id.*

[8] *Selling Guide: Fannie Mae Single Family,* B4–1.3–06, Fannie Mae, (Aug. 2, 2023), *https://selling-guide.fanniemae.com; The Single-Family Seller/Servicer Guide, Exhibit 36 Condition and Quality Ratings and Level of Updating Definitions,* Freddie Mac, (May 31, 2017), *https://guide.freddiemac.com/app/guide/exhibit/36; Uniform Appraisal Dataset,* Freddie Mac, *https://sf.freddiemac.com/tools-learning/uniform-mortgage-data-program/uad#business-resources* (last visited Aug. 23, 2023).

[9] This information collection is approved by the Office of Management and Budget (OMB) under Control Number 2900–0890.

and broker/agent entities to increase their participation in the VA home loan program?

(5)(a) As an interested stakeholder, in your opinion, are waivers of certain MPRs necessary in the VA home loan buying process? If so, please explain.

(b) Would your answer change if VA adopted a more generalized approach to MPRs, such as the property condition ratings in the Fannie Mae Selling Guide or Freddie Mac Seller/Servicer Guide and UAD, versus the current MPRs?

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on December 4, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–27068 Filed 12–8–23; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register
Vol. 88, No. 236
Monday, December 11, 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 will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) 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 these information collections are best assured of having their full effect if received by January 10, 2024. Written comments and recommendations for the proposed information collection should be submitted, identified by docket number 0535–0264, within 30 days of the publication of this notice by any of the following methods:

- *Email: omboffi cer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* 855–838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

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.

National Agricultural Statistics Service (NASS)

Title: Fruits, Nut, and Specialty Crops.

OMB Control Number: 0535–0039.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of fruit, tree nuts, and specialty crops are an integral part of this program. These estimates support the NASS strategic plan to cover all agricultural cash receipts. The authority to collect these data activities is granted under U.S. Code title 7, Section 2204(a). Information is collected on a voluntary basis from growers, processors, and handlers through surveys. Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, as amended, 7 U.S.C., 2276, and Title III of Public Law 115–435 (CIPSEA) which requires USDA to afford strict confidentially to non-aggregated data provided by respondents.

Revisions to burden are needed due to the removal of surveys funded under cooperative agreements, changes in the size of the target population, sample design, and minor changes in questionnaire design.

Need and Use of the Information: Data reported on fruit, nut, and specialty crops are used by NASS to estimate crop acreage, yield, production, utilization, price, and value in States with significant commercial production. These estimates are essential to farmers, processors, importers and exporters, shipping companies, cold storage facilities and handlers in making production and marketing decisions. Estimates from these inquiries are used by market order administrators in their determination of expected crop supplies under federal and State market orders.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 55,435.

Frequency of Responses: On occasion; Annually; Semi-annually; Quarterly; Monthly; Weekly.

Total Burden Hours: 28,114.

Levi Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–27078 Filed 12–8–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Farm Service Agency.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Department of Agriculture (USDA), Farm Service Agency (FSA) has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA).

DATES: Comments must be submitted by January 10, 2024.

ADDRESSES: 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.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of September 19, 2023 (85 FR 64402).

Farm Service Agency—0560–0286

Current Actions: Extension of currently approved collection.

Type of Review: Extension.

Affected Public: Individuals and households; businesses; organizations; and State and local government.

Average Expected Annual Number of Activities: 8.

Respondents: 210,500.

Annual Responses: 210,500.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 37,333.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–27142 Filed 12–8–23; 8:45 am]

BILLING CODE 3410–05–P

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 January 10, 2024 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.

National Institute of Food and Agriculture

Title: Children, Youth, and Families at Risk (CYFAR) Year End Report.

OMB Control Number: 0524–0043.

Summary of Collection: The National Institute of Food and Agriculture (NIFA) administers grants that support the Children, Youth, and Families at Risk (CYFAR) Sustainable Communities Project (SCP). Funding for this program is authorized under section 3(d) of the Smith-Lever Act (7 U.S.C. 341 *et seq.*), CYFAR funding supports community-based programs (also known as ''extension programs'') which serve children, youth, and families in at-risk environments. CYFAR funds are intended to support the development of high quality, effective programs based on research.

The purpose of CYFAR SCP funding is to improve the quality and quantity of comprehensive community-based programs for at-risk children, youth, and families supported by the Cooperative Extension System. Collaboration across disciplines, program areas, and geographic lines, as well as a holistic approach that views the individual in the context of the family and community, are central to Sustainable Community Projects. CYFAR grants are awarded only to 1862, 1890, and 1994 Land Grant institutions through a competitive application process. Awards are made annually, for five year terms. There are up to 50 grantees at any given time.

Need and Use of the Information: The purpose of the CYFAR Year End Report is to collect the demographic and impact data from each community site in order to evaluate the impact of the programs on intended audiences. CYFAR grants represent a Federal financial investment and the data collected allows NIFA to gauge the benefits achieved from these investments. The CYFAR Year End Report tells the story of each of the CYFAR SCP grantees and is part of the information used to determine whether grantees have performed adequately in the past year to receive a continuation of funding. Without the information NIFA would not be able to verify if CYFAR programs are reaching at risk,

low-income audiences specified in the authorizing legislation.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 50.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,320.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–27039 Filed 12–8–23; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Tahoe National Forest is proposing to establish a new recreation fee site and a new annual recreation pass. Recreation fee revenues collected at the new recreation fee site would be used for operation, maintenance, and improvement of the new site. Recreation fee revenues collected from the new annual pass would be used for operation, maintenance, and improvement of the standard amenity recreation fee sites listed in the **SUPPLEMENTARY INFORMATION** section of this notice. An analysis of nearby recreation fee sites with similar amenities shows the recreation fees that would be charged at the new recreation fee site and the fees collected from the annual pass are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the new recreation fee and new annual recreation pass would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Tahoe National Forest, 631 Coyote Street, Nevada City, CA 95959.

FOR FURTHER INFORMATION CONTACT: Mary Sullivan, Forest Recreation Program Manager, 530–478–6298 or *mary.sullivan2@usda.gov*.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish a six-month advance notice in the **Federal Register** of establishment of new recreation fee sites. In accordance with Forest Service Handbook 2309.13, chapter 30, the Forest Service will publish the proposed new recreation fee site, as well as the proposed new annual recreation pass, in local newspapers and other local publications for public comment. Most of the new recreation fee revenues would be spent where they are collected to enhance the visitor experience at the new recreation fee site and existing recreation fee sites that will honor the new annual recreation pass.

A new expanded amenity recreation fee of $75 per night would be charged for rental of Grouse Ridge and Sardine Peak Lookouts. A new Tahoe National Forest annual pass of $40 per vehicle per year would be honored for the existing standard amenity recreation fees charged at the French Meadows, McGuire, and Sugar Pine boating sites and at the Manzanita Picnic Area. The America the Beautiful—the National Parks and Federal Recreational Lands Pass would continue to be honored at these standard amenity recreation fee sites.

Expenditures from recreation fee revenues collected at the new recreation fee site as well as from the annual recreation pass would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, the new recreation fee and new annual recreation pass will be reviewed by a Resource Advisory Committee prior to a final decision and implementation. Reservations for Grouse Ridge and Sardine Peak Lookouts could be made online at *www.recreation.gov* or by calling 877–444–6777. Reservations would cost $8.00 per reservation.

Dated: December 5, 2023.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–27118 Filed 12–8–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Iowa Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold public meetings via Zoom on Thursday, January 18, 2024 and Thursday, February 15, 2024 from 3:00 p.m.–4:00 p.m. Central Time. The purpose of these meetings is for the Committee to begin planning a briefing series to study the barriers to mental and behavioral health access for K–12 students.

DATES:

Thursday, January 18, 2024, from 3:00 p.m.–4:00 p.m. Central Time

Thursday, February 15, 2024, from 3:00 p.m.–4:00 p.m. Central Time

ADDRESSES: The meetings will be held via Zoom.

January 18th Business Meeting

—*Registration Link (Audio/Visual): https://www.zoomgov.com/meeting/register/vJIsfuCtqjwoE6EGvdTueiLTGnyVyYlUvZk*

—Join by Phone (Audio Only) 1–833–435–1820 USA Toll Free: Meeting ID: 161 995 4729

February 15th Business Meeting

—*Registration Link (Audio/Visual): https://www.zoomgov.com/meeting/register/vJItcumqpjMsEm1mWRlXi8BXrkHC1RZ3lms*

—Join by Phone (Audio Only) 1–833–435–1820 USA Toll Free: Meeting ID: 160 502 8868

FOR FURTHER INFORMATION CONTACT: Ana Fortes, Designated Federal Officer, at *afortes@usccr.gov* or (202) 681–0857.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Corrine Sanders, Support Specialist, at *csanders@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Ana Fortes at *afortes@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

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

Agenda

I. Welcome and Chair Remarks
II. Planning Discussion
III. Public Comment
IV. Adjournment

Dated: December 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–27150 Filed 12–8–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 1:00 p.m. MT on Thursday, January 11, 2024. The purpose of the meeting is to discuss the Committee's project regarding the civil rights implications of disparate outcomes in Utah's K–12 education system.

DATES: Thursday, January 11, 2024, from 1:00 p.m.–2:00 p.m. Mountain Time

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_eTqq7sgCQ8-AvlIAL9iBJA.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 849 8805.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

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

Agenda

I. Welcome & Roll Call
II. Discussion: Civil Rights Implications of Disparate Outcomes in Utah's K–12 Education System
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: December 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–27125 Filed 12–8–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1:00 p.m. MT on Wednesday, February 7, 2024. The purpose of this meeting is to discuss the testimony received on the topic of housing discrimination in the state.

DATES: Wednesday, February 7, 2024, from 1:00 p.m.–2:30 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_GYMWSPRrTTqfz3WWPRUoLQ.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 160 6909.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the

comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

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

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: December 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–27127 Filed 12–8–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 9:30 a.m. ChST on Thursday, January 18, 2024 (6:30 p.m. ET on Wednesday, January 17, 2024). The purpose of this meeting is to discuss the Committee's project, *Overrepresentation of FAS Members in the Criminal Justice System on Guam.*

DATES: Thursday, January 18, 2024, from 9:30 a.m.–11:00 a.m. ChST (Wednesday, January 17, 2024, from 6:30 p.m.–8:00 p.m. ET).

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_-b9FW1f3TQC2C93cSNt_NA.

Join by Phone (Audio Only): (833) 435–1820 USA Toll Free; Meeting ID: 160 163 2949.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Mussatt at *dmussatt@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

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

Agenda

I. Welcome & Roll Call
II. Announcements & Updates
III. Approval of Meeting Minutes
IV. Committee Discussion
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: December 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–27126 Filed 12–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Revolving Loan Fund Financial Report, Form ED–209

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The Economic Development Administration (EDA) proposes to extend Form ED–209, Revolving Loan Fund (RLF) Financial Report, to continue collecting limited performance information from EDA RLF award recipients. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 9, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to Mitchell Harrison, Program Analyst, Performance and National Programs Division, Economic Development Administration, U.S. Department of Commerce, via email to *MHarrison@eda.gov* or *PRAcomments@doc.gov.* Please reference OMB Control Number 0610–0095 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mitchell

Harrison, Program Analyst, Performance and National Programs Division, Economic Development Administration, U.S. Department of Commerce, via email to *MHarrison@eda.gov* or by phone, (202) 482–4696.

SUPPLEMENTARY INFORMATION:

I. Abstract

Guided by the basic principle that sustainable economic development should be locally driven, the Economic Development Administration (EDA) works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs.

The EDA Revolving Loan Fund (RLF) Program, authorized under section 209 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3149), has served as an important pillar of EDA investment programs since the establishment of the RLF Program in 1975. The purpose of the RLF Program is to provide regions with a flexible and continuing source of capital, to be used with other economic development tools, for creating and retaining jobs and inducing private investment that will contribute to long-term economic stability and growth. EDA provides RLF grants to eligible recipients, which include State and local governments, Indian Tribes, and non-profit organizations, to operate a lending program that offers loans with flexible repayment terms, primarily to small businesses in distressed communities that are unable to obtain traditional bank financing. These loans enable small businesses to expand and lead to new employment opportunities that pay competitive wages and benefits.

A unique feature of the RLF Program is that the federal interest in RLF awards does not terminate but may be released by EDA seven years after completion of the grant disbursement. EDA RLF regulations therefore require RLF recipients to submit to EDA RLF Financial Report, Form ED–209, which collects limited performance information for RLF awards (13 CFR 307.14(a)). EDA currently requires Form ED–209 to be submitted on an annual basis for high-performing RLFs and on a semi-annual basis for other RLFs.

Through implementation of the Reinvigorating Lending for the Future Act (RLF Act), EDA released its federal interest in a substantial portion of the RLF awards that were previously required to submit Form ED–209. As a result, the number of respondents required to submit Form ED–209 will decrease. Although Form ED–209 is being extended without change, and the estimated amount of time required to complete Form ED–209 remains unchanged at three hours, the estimated annual burden hours for Form ED–209 is decreasing because of the decreased number of RLF awards and respondents required to complete Form ED–209.

II. Method of Collection

RLF recipients must complete and submit the information collected by Form ED–209 online through a Salesforce application (''RLF Portal'') for Revolving Loan Fund (RLF) reporting that is accessible at *https://doc-eda.my.site.com/RLF/s/login/.*

III. Data

OMB Control Number: 0610–0095.

Form Number(s): ED–209.

Type of Review: Extension of a currently approved information collection.

Affected Public: EDA RLF recipients: State and local governments, Indian Tribes, and non-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost to Public: $173,520 (cost assumes application of U.S. Bureau of Labor Statistics first quarter 2020 mean hourly employer costs for employee compensation for professional and related occupations of $57.84).

Respondent's Obligation: Mandatory.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–27076 Filed 12–8–23; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Antidumping Duty Order on Hydrofluorocarbon Blends From the People's Republic of China: Preliminary Affirmative Determination of Circumvention With Respect to R–410A From the Republic of Turkey

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce preliminarily determines that imports of R–410A, completed in the Republic of Turkey (Turkey) using People's Republic of China (China)-origin components, and exported from Turkey, as specified below, are circumventing the antidumping duty (AD) order on hydrofluorocarbon (HFC) blends from China.

DATES: Applicable December 11, 2023.

FOR FURTHER INFORMATION CONTACT: Paul Senoyuit, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6106.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2016, Commerce published in the **Federal Register** the AD order on HFC blends from China.[1] On July 7, 2023, Commerce initiated a country-wide circumvention inquiry to determine whether imports of R–410A, completed in Turkey using HFC components R–32 (difluoromethane) and R–125 (pentafluoroethane) (collectively, China-origin components) manufactured in China, are circumventing the *Order* and, accordingly, should be covered by the

[1] *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (*Order*).

scope of the *Order.*[2] In August 2023, Commerce selected the following two mandatory respondents in this circumvention inquiry: Cantas Ic Ve Dis Ticaret Sogutma Sistermleri Sanayi A.S. (Cantas) and ICE Sogutma Sanayi Ve Ticaret Ltd. (ICE).[3] For a complete description of the events that followed the initiation of this circumvention inquiry, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise covered by the *Order* is certain HFC blends. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[5]

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers R–410A, completed in Turkey using China-origin HFC components and subsequently exported from Turkey to the United States (inquiry merchandise).

Methodology

Commerce is conducting this circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226. For a complete description of the methodology underlying this circumvention inquiry, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included in Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Circumvention Determination

As detailed in the Preliminary Decision Memorandum, and the ''Use of Adverse Facts Available (AFA)'' section, Commerce preliminarily determines that R–410A completed in Turkey using HFC components from China, that is subsequently exported from Turkey to the United States, is circumventing the *Order* on a country-wide basis. As a result, in accordance with section 781(b) of the Act, we preliminarily determine that the inquiry merchandise should be included within the scope of the *Order. See* the ''Suspension of Liquidation and Cash Deposit Requirements'' section below for details regarding suspension of liquidation and cash deposit requirements. *See* the ''Certifications'' and ''Certification Requirements for Turkey'' sections below for details regarding the use of certifications for inquiry merchandise exported from Turkey.

Use of AFA

Pursuant to section 776(a) of the Act, if the 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, 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.

Commerce requested information from Cantas and ICE. In these initial questionnaires, Commerce explained that, if the company to which Commerce issued the questionnaire fails to respond to the questionnaire, or fails 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. Cantas, one of the mandatory respondents in Turkey, received, but failed to respond to, Commerce's questionnaire.[6]

Therefore, we preliminarily find that Cantas failed to provide requested information by the deadline or in the form and manner requested, and significantly impeded this inquiry. Moreover, we find that these companies failed to cooperate to the best of its ability to provide the requested information because it did not provide a response to Commerce's initial questionnaires. Consequently, we used adverse inferences with respect to Cantas 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 used in these preliminary determinations, *see* the Preliminary Decision Memorandum.

As detailed in the Preliminary Decision Memorandum, based on AFA, we preliminarily determine that Cantas exported inquiry merchandise and that U.S. entries of that merchandise are circumventing the *Order.* Additionally, we are preliminarily precluding Cantas from participating in the certification program that we are establishing for exports of R–410A completed in Turkey using HFC components from China, that is subsequently exported from Turkey to the United States.

Preliminary Determination of No Shipments

ICE timely responded to Commerce's circumvention questionnaire, in which it reported that it did not sell or export the merchandise covered by the circumvention inquiry to the United States during the period of inquiry.[7] Based on the information and documentation provided by ICE, we preliminarily determine that ICE had no shipments of inquiry merchandise to the United States during the period of inquiry.

Suspension of Liquidation and Cash Deposit Requirements

Based on the preliminary affirmative country-wide determination of circumvention for Turkey, 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 R–410A, completed in Turkey using China-origin components, that were entered, or withdrawn from warehouse, for consumption on or after July 7, 2023, the date of publication of the initiation of this circumvention inquiry in the **Federal Register**.[8] CBP shall require cash deposits in accordance with the rate established for the China-wide entity, *i.e.,* 216.37 percent,[9] for entries

[2] *See Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty Order,* 88 FR 43275 (July 7, 2023) (*Initiation Notice*).

[3] *See* Memorandum, ''Respondent Selection,'' dated August 23, 2023; *see also* Commerce's Letter, ''R–410A from Turkey Initial Questionnaire,'' dated August 28, 2023.

[4] *See* Memorandum, ''Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Decision Memorandum for the Circumvention Inquiry on the Antidumping Duty Order with Respect to Imports of R–410A from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *Id.* at 2–3.

[6] *Id.* at 5; *see also* Memorandum, ''Delivery Confirmation,'' dated September 1, 2023.

[7] *See* ICE's Letter, ''ICE Sogutma Sanayi Ve Ticaret Ltd. STI's Response to the Department's August 28, 2023 Initial Questionnaire,'' dated October 5, 2023.

[8] *See Initiation Notice,* 88 FR at 43275.

[9] *See Order,* 81 FR at 55438.

of such merchandise produced in Turkey.

R–410A produced in Turkey from HFC blends that is not of China origin is not subject to this inquiry. Therefore, cash deposits are not required for such merchandise under the *Order.* If an importer imports R–410A from Turkey and claims that it was not produced using China-origin HFC components, in order to not be subject to the *Order* cash deposit requirements, the importer and exporter are required to meet the certification and documentation requirements described in the ''Certifications'' and ''Certification Requirements for Turkey'' sections, below.

Commerce has established the following third-country case number for Turkey in the Automated Commercial Environment (ACE) for such entries: A–489–400–000. For Cantas, which will not be permitted to certify that its merchandise was not produced from China-origin HFC components, Commerce will direct CBP, for all entries of R–410A from Turkey produced or exported by Cantas, to suspend liquidation and require a cash deposit at the rate established for the China-wide entity, *i.e.,* 216.37 percent, under this third country case number.[10]

Where no certification is provided for an entry, and the *Order* potentially applies to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the rate established for the China-wide entity, *i.e.,* 216.37 percent, under the third country case number above. These suspension of liquidation instructions 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 Appendix II 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 duties.

Certifications

To administer the preliminary affirmative country-wide determination of circumvention, Commerce established importer and exporter certifications, which allow companies to certify that specific entries of R–410A from Turkey are not subject to suspension of liquidation or the collection of cash deposits pursuant to this preliminary affirmative country-wide determination of circumvention because the merchandise is not made with China-origin components (*see* Appendix II to this notice).

Because Cantas was non-cooperative, it is not currently eligible to use the certification described above.[11] Commerce may reconsider the eligibility of Cantas in the certification process in a future administrative review. Each year during the anniversary month of the publication of an AD or countervailing duty (CVD) order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Act, may request, in accordance with 19 CFR 351.213, that Commerce conduct an administrative review of that AD or CVD order, finding, or suspended investigation. An interested party who would like Commerce to conduct an administrative review of the *Order* should wait until Commerce announces via the **Federal Register** the next window during the anniversary month of the publication of the *Order* to submit such requests. The anniversary month for this *Order* is August.

Importers and exporters that claim that the entry of R–410A from Turkey is not subject to suspension of liquidation or the collection of cash deposits because the merchandise is not made with China-origin components 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 for Turkey

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, the importer should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to certify on behalf of the importer.

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 should be completed by the party selling the R–410A that was manufactured in Turkey 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 R–410A from Turkey that was entered, or withdrawn from warehouse, for consumption during the period July 7, 2023 (the date of initiation of this circumvention inquiry), through the date of publication of the preliminary determination 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 this preliminary determination 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 this preliminary determination in the **Federal Register**.

For unliquidated entries (and entries for which liquidation has not become final) of R–410A from Turkey that were declared as non-AD type entries (*e.g.,*

[10] Cantas is not currently eligible to participate in the certification program as either producer or exporter. In addition, other parties exporting R–410A produced by Cantas will likewise not be eligible to participate in the certification program with regard to such products.

[11] *See* Preliminary Decision Memorandum at the ''Use of Facts Available with Adverse Inferences'' section; *see also, e.g., Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of 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).

type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period July 7, 2023 (the date of initiation of these circumvention inquiries), through the date of publication of the preliminary determination 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 type entries to AD type entries (*e.g.,* type 01 to type 03). Importers should report those AD type entries using the third country case numbers identified in the ''Suspension of Liquidation and Cash Deposit Requirements'' section, 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 this preliminary affirmative country-wide determination of circumvention and the *Order,*[12] all unliquidated entries for which these requirements were not met and to require the importer to post applicable cash deposits equal to the rate noted above.

Interested parties may comment on these certification requirements, and on the certification language contained in Appendix II to this notice in their case briefs.

Verification

As provided in 19 CFR 351.307, Commerce may verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments should be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the verification report is issued. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[13] Interested parties who submit case briefs or rebuttal briefs in these proceedings must submit: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In these circumvention inquiries, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[15] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination of this circumvention inquiry. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, 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.

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 this preliminary determination to include the merchandise subject to these circumvention inquiries within the *Order.* 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

Commerce is issuing and publishing this determination in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(1).

Dated: December 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Topics Discussed in the Preliminary Decision Memorandum

Appendix II

Importer Certification

I hereby certify that:

A. {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 hydrofluorocarbon (HFC) blend R–410A produced in Turkey that entered under the entry number(s) identified below, and which are covered by this certification. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the importation of the product, including the exporter's and/or foreign seller's identity and location;

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The R–410A 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}.

[12] *See Order.*

[13] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[16] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

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 R–410A covered by this certification was 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 HFC components (*i.e.,* R–32 and R–125) used to produce the R–410A);

F. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Entry Summary Line Item #:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Foreign Seller's Invoice Line Item #:
Country of Origin of HFC Components:
Producer:
Producer's Address:

G. The R–410A covered by this certification do not contain HFC components (*i.e.,* R–32 and R–125) produced in the People's Republic of China (China);

H. 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 data sheets, chemical testing specifications, productions records, invoices, etc.) for the later of: (1) the date that is five years after the date of the latest entry covered by the certification or; (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

I. I understand that {IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to the production and/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 date of the latest entry covered by the certification or; (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries;

J. I understand that {IMPORTING COMPANY} is required to submit a copy of the importer and exporter certifications as part of the entry summary by uploading them into the document imaging system (DIS) in ACE, and 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 request of either agency;

K. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

L. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) order on R–410A from Turkey. I understand that such finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

M. I understand that agents of the importer, such as brokers, are not permitted to make this certification;

N. 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**.

O. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make 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 FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES}; located at {ADDRESS OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES};

B. I have direct personal knowledge of the facts regarding the production and exportation of the hydrofluorocarbon (HFC) blend R–410A 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 R–410A, and the individual components thereof, covered this certification were produced by {NAME OF PRODUCING COMPANY}, located at {ADDRESS OF 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 R–410A produced in Turkey do not contain HFC components (*i.e.,* R–32 and R–125) produced in the People's Republic of China (China);

E. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:
Foreign Seller's Invoice to U.S. Customer Line item #:
Producer Name:
Producer's Address:
Producer's Invoice # to Foreign Seller: (*If the foreign seller and the producer are the same party, put NA here.*)
Name of Producer of HFC Components:
Location (Country) of Producer of HFC Components:

F. The R–410A covered by this certification was shipped to {NAME OF U.S. PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

G. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, chemical testing specifications, productions records, invoices, *etc.*) for the later of: (1) the date that is five years after the latest date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

H. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon request of either agency;

I. I understand that the claims made herein, and the substantiating documentation are subject to verification by CBP and/or Commerce;

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are within the scope of the antidumping duty order on R–410A from Turkey. I understand that such a finding will result in:

(i) suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the 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 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 shipment 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, 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**; and

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL }
{DATE}

[FR Doc. 2023–27130 Filed 12–8–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Antidumping Duty Order on Hydrofluorocarbon Blends From the People's Republic of China: Preliminary Affirmative Determination of Circumvention With Respect to R–410A and R–407C From Malaysia

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that imports of R–410A and R–407C, completed in Malaysia using the People's Republic of China (China)-origin components, and exported from Malaysia, as specified below, are circumventing the antidumping duty (AD) order on hydrofluorocarbon blends (HFC blends) from China.

DATES: Applicable December 11, 2023.

FOR FURTHER INFORMATION CONTACT: Jerry Xiao, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2273.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2016, Commerce published in the **Federal Register** the AD order on HFC blends from China.[1] On July 7, 2023, Commerce initiated a country-wide circumvention inquiry to determine whether imports of R–410A and R–407C, completed in Malaysia using HFC components, R–32 (difluoromethane), R–125 (pentafluoroethane), and R–134a (1,1,1,2 tetrafluoroethane) (collectively, China-origin components) manufactured in China, are circumventing the *Order* and, accordingly, should be covered by the scope of the *Order*.[2] The sole respondent in this circumvention inquiry is Juara Teguh Resources PLT (Juara) [3] For a complete description of the events that followed the initiation of this circumvention inquiry, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise covered by the *Order* is certain HFC blends. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[5]

Merchandise Subject to the Circumvention Inquiries

This circumvention inquiry covers R–410A and R–407C, completed in Malaysia using China-origin HFC components and subsequently exported from Malaysia to the United States.

Methodology

Commerce is conducting this circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226. For a complete description of the methodology underlying this circumvention inquiry, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Circumvention Determination

As detailed in the Preliminary Decision Memorandum, and based on the ''Use of Adverse Facts Available (AFA)'' section, Commerce preliminarily determines that R–410A and R–407C completed in Malaysia using HFC components from China, that are subsequently exported from Malaysia to the United States, are circumventing the *Order* on a country-wide basis. As a result, in accordance with section 781(b) of the Act, we preliminarily determine that the inquiry merchandise should be included within the scope of the *Order. See* the ''Suspension of Liquidation and Cash Deposit Requirements'' section below for details regarding suspension of liquidation and cash deposit requirements. *See* the ''Certified Entries'' section below for details regarding Commerce's preliminary decision concerning certifications for inquiry merchandise exported from Malaysia.

Use of AFA

Pursuant to section 776(a) of the Act, if the 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, 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.

We requested information from Juara. In the Initial Questionnaire, Commerce explained that, if the company to which Commerce issued the questionnaire fails to respond to the questionnaire, or fails 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

[1] *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (*Order*).

[2] *See Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty Order,* 88 FR 43275 (July 7, 2023) (*Initiation Notice*).

[3] *See* Memorandum, ''Respondent Selection,'' dated August 14; *see also* Commerce's Letter, ''Custom Blends from Malaysia Initial Questionnaire,'' dated August 23, 2023 (Initial Questionnaire).

[4] *See* Memorandum, ''Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Decision Memorandum for the Circumvention Inquiry of the Antidumping Duty Order with Respect to Imports of R–410A and R–407C from Malaysia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *Id.* at 2–3.

request for information, and may use an inference that is adverse to the company's interests in selecting from the facts otherwise available.[6] Juara received, but failed to respond to, Commerce's questionnaire.[7]

Therefore, we preliminarily find that Juara failed to provide requested information by the deadline or in the form and manner requested, and significantly impeded this inquiry. Moreover, we find that Juara failed to cooperate to the best of its ability to provide the requested information because it did not provide a response to Commerce's initial questionnaire. Consequently, we used adverse inferences with respect to Juara 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 AFA used in this preliminary determination, *see* the Preliminary Decision Memorandum.

As detailed in the Preliminary Decision Memorandum, based on AFA, we preliminarily determine that Juara exported inquiry merchandise and that U.S. entries of that merchandise are circumventing the *Order.*

Suspension of Liquidation and Cash Deposit Requirements

Based on the preliminary affirmative country-wide determination of circumvention for Malaysia 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 R–410A and R0407C, completed in Malaysia using China-origin components, that were entered, or withdrawn from warehouse, for consumption on or after July 7, 2023, the date of publication of the initiation of this circumvention inquiry in the **Federal Register**.[8] CBP shall require cash deposits in accordance with the rate established for the China-wide entity, *i.e.,* 216.37 percent,[9] for entries of such merchandise produced in Malaysia.

Commerce has established the following third-country case number for Malaysia in the Automated Commercial Environment (ACE) for such entries: A–557–300–000. For Juara, Commerce will direct CBP, for all entries of R–410A or R–407C from Malaysia produced or exported by Juara, to suspend liquidation and require a cash deposit at the rate established for the China-wide entity, *i.e.,* 216.37 percent, under this third country case number.

R–410A and R–407C produced in Malaysia that is not from China-origin HFC blends is not subject to this inquiry. Therefore, cash deposits are not required for such merchandise under the *Order.* These suspension of liquidation instructions will remain in effect until further notice.

Certified Entries

At this time, Commerce has not included a certification requirement. We invite interested parties to comment on this matter.

Public Comment

Interested parties may submit case briefs to Commerce no later than 14 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in these proceedings must submit: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In these circumvention inquiries, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this circumvention inquiry. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, 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.

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 this preliminary determination to include the merchandise subject to this circumvention inquiry within the *Order.* 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

Commerce is issuing and publishing this determination in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(1).

Dated: December 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Topics Discussed in the Preliminary Decision Memorandum

[6] *See* Initial Questionnaire at 3.

[7] *See* Memorandum, ''Delivery Confirmation,'' dated September 1, 2023.

[8] *See Initiation Notice,* 88 FR at 43275.

[9] *See Order,* 81 FR at 55438.

[10] Commerce is exercising its discretion, under 19 CFR 351.309(C)(1)(ii), to alter the time limit for filing case briefs.

[11] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023).

[12] *See* 19 CFR 351.309(c)(2)(d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[FR Doc. 2023–27129 Filed 12–8–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–808]

Certain Steel Nails From the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines Oman Fasteners, LLC (Oman Fasteners), the sole producer and exporter subject to this administrative review, made sales of certain steel nails (steel nails) from the Sultanate of Oman (Oman) in the United States at prices below normal value (NV) during the period of review (POR), July 1, 2021, through June 30, 2022.

DATES: Applicable December 11, 2023.

FOR FURTHER INFORMATION CONTACT: Dakota Potts, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2023, Commerce published the *Preliminary Results* of this administrative review and we invited interested parties to comment.[1] A summary of the events that occurred since Commerce published the *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, are discussed in the Issues and Decision Memorandum.[2]

Scope of the Order [3]

The product covered by this *Order* is steel nails from Oman. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the parties' case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on comments received from interested parties regarding our *Preliminary Results* and our review of the record, we made changes to the preliminary weighted-average dumping margin calculations for Oman Fasteners, as detailed in the Issues and Decision Memorandum.[4]

Rate for Non-Examined Companies

The Tariff Act of 1930, as amended (the Act), and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which we did not examine in an administrative review. When the rates for individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate. We calculated a dumping margin of 0.00 percent for the sole mandatory respondent, Oman Fasteners, LLC. Therefore, we assigned the companies not selected for examination a margin of 0.00 percent, the sole margin calculated in this proceeding.[5]

Final Results of Review

As a result of this review, we determine the following estimated weighted-average dumping margins exist for the POR:

Exporter or producer	Weighted-average dumping margin (percent)
Oman Fasteners, LLC	0.00
Al Ansari Teqmark, LLC	0.00
Al Kiyumi Global LLC	0.00
Al Sarah Building Materials LLC	0.00
Buraimi Iron & Steel, LLC	0.00
CL Synergy (Pvt) Ltd	0.00
Diamond Foil Trading LLC	0.00
Gulf Nails Manufacturing, LLC	0.00
Gulf Steel Manufacturers, LLC	0.00
Muscat Industrial Company, LLC	0.00
Muscat Nails Factory Golden Asset Trade, LLC	0.00
Omega Global Uluslararasi Tasimacilik Lojistik Ticaret Ltd. Sti	0.00

[1] *See Certain Steel Nails from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022,* 88 FR 52120 (August 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the Sultanate of Oman,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015) (*Order*).

[4] *See* Issues and Decision Memorandum at Comment 2.

[5] *See Albemarle Corp. & Subsidiaries* v. *United States,* 821 F.3d 1345, 1353 (Fed. Cir. 2016); *see also Certain Hot Rolled Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018,* 85 FR 57821 (September 16, 2020).

Exporter or producer	Weighted-average dumping margin (percent)
WWL Indian Private Ltd	0.00
All Others	9.10

Disclosure

Commerce intends to disclose the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review.[6] Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

[6] *See* 19 CFR 351.212(b).

[7] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin that is established in the ''Final Results of Review''; (2) for previously investigated or reviewed companies not subject to this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 9.10 percent *ad valorem,* the all-others rate established in the LTFV investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(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 the terms of an APO is a sanctionable violation.

[8] *See Order.*

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: December 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–27131 Filed 12–8–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD576]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits, permit amendments, and permit modifications.

SUMMARY: Notice is hereby given that permits, permit amendments, and permit modifications have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Hapeman (Permit No. 23639–02), Carrie Hubard (Permit Nos. 21678–01 and 27361), Shasta McClenahan, Ph.D. (Permit Nos. 21938–03 and 27426), Erin Markin, Ph.D. (Permit No. 20528–05), and Malcolm Mohead (Permit No. 23096–01); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit, permit amendment, or permit modification had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *https://www.federalregister.gov* and search on the permit number provided in table 1 below.

TABLE 1—ISSUED PERMITS, PERMIT AMENDMENTS, AND PERMIT MODIFICATIONS

Permit No.	RTID	Applicant	Previous FEDERAL REGISTER Notice	Issuance Date
20528–05	0648–XD367	South Carolina Department of Natural Resources, 217 Fort Johnson Road, Charleston, SC 29412 (Responsible Party: Bill Post).	88 FR 65369, September 22, 2023.	November 17, 2023.
21678–01	0648–XG320	John Calambokidis, Cascadia Research Collective, 218 ½ West Fourth Avenue, Olympia, WA 98501.	83 FR 64114, December 13, 2018.	November 16, 2023.
21938–03	0648–XG344	NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149 (Responsible Party: Mridula Srinivasan, Ph.D.)..	84 FR 27767, June 14, 2019.	November 16, 2023.
23639–02	0648–XD215	Coonamessett Farm Foundation, Inc., 277 Hatchville Road, East Falmouth, MA 02536, (Responsible Party: Ronald Smolowitz).	88 FR 51300, August 3, 2023.	November 2, 2023.
27361	0648–XD310	Brent Stewart, Ph.D., Brent S Stewart Associates, 3889 Creststone Place, San Diego, CA 92130.	88 FR 60664, September 5, 2023..	November 14, 2023.
27426	0648–XD335	Oregon State University, Marine Mammal Institute, 2030 Marine Science Drive, Newport, OR 97365 (Responsible Party: Lisa Ballance, Ph.D.).	88 FR 62344, September 11, 2023.	November 17, 2023.
23096–01	0648–XD422	University of Georgia, Warnell School of Forestry and Natural Resources, 180 East Green Street, Athens, GA 30602 (Responsible Party: Nate Nibbelink, Ph.D.).	88 FR 67251, September 29, 2023.	November 20, 2023.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: December 6, 2023.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–27134 Filed 12–8–23; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m. EST, Wednesday, December 13, 2023.

PLACE: CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- *Proposed Rule:* Operational Resilience Framework for Futures Commission Merchants, Swap Dealers, and Major Swap Participants;
- *Proposed Rule:* Capital and Financial Reporting Requirements for Swap Dealers and Major Swap Participants;
- *Proposed Rule:* Protection of Clearing Member Funds Held by Derivatives Clearing Organizations;
- Amended Application of Bitnomial Clearinghouse, LLC for Registration as a Derivatives Clearing Organization; and
- *Proposed Rule:* Amendments to Swap Data Recordkeeping and Reporting Requirements.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* Members of the public are free to attend the meeting in person, or have the option to listen by phone or view a live stream. Instructions for listening to the meeting by phone and connecting to the live video stream will be posted on the Commission's website.

In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: December 6, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2023–27175 Filed 12–7–23; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Publication of Supplementary Materials

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense (DoD).

ACTION: Publication of supplementary materials accompanying the Manual for Courts-Martial (MCM), United States (2024 ed.).

SUMMARY: The JSC hereby announces the publication of the supplementary materials accompanying the MCM. These supplemental materials have been approved by the JSC and the General Counsel of the DoD and shall be applied in conjunction with the rule with which they are associated. The supplemental materials are separated into 5 ''TABs'' (alternatively called ''ANNEXES''), TABs A through E.

DATES: The supplemental materials in TABs A, C, D, and E should be consulted on or after December 27, 2023, when utilizing the MCM (2024 edition). The amendments to the Discussion sections of Parts II and III of the MCM, found in TAB B, are effective insofar as the rules they supplement are effective. Refer to the text of E.O. 14103 (July 28, 2023) for further information on the effective date of the rules.

FOR FURTHER INFORMATION CONTACT: Commander Anthony M. DeStefano, U.S. Coast Guard, Executive Secretary, JSC, (202) 372–3807 (voice), *anthony.m.destefano@uscg.mil* (email). The JSC website is located at *http://jsc.defense.gov.*

SUPPLEMENTARY INFORMATION: The supplementary materials, as amended by the President in Executive Order (E.O.) 12473 (April 13, 1984) to present, including Executive Order (E.O.) 14062 (January 26, 2022) and E.O. 14103 (July 28, 2023) [hereinafter ''MCM (2024 ed.)''], are available on the internet at *https://jsc.defense.gov/Military-Law/Changes-Since-2012-MCM/.* These changes have not been coordinated within the DoD under DoD Directive 5500.1, ''Preparation, Processing, and Coordinating Legislation, E.O. Proclamations, Views Letters and Testimony,'' June 15, 2007, and do not constitute the official position of the DoD, the Military Departments, or any other department or agency of the U.S. government.

Dated: December 5, 2023.

Natalie M. Ragland,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–27073 Filed 12–8–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0145]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Income Driven Repayment Plan Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan Programs

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 10, 2024.

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 Beth Grebeldinger, 202–377–4018.

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: Income Driven Repayment Plan Request for the William D. Ford Federal Direct Loans and Federal Family Education Loan Programs.

OMB Control Number: 1845–0102.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 9,500,000.

Total Estimated Number of Annual Burden Hours: 3,135,000.

Abstract: The Department of Education (Department) is requesting an extension of the information collection, 1845–0102. This collection was approved under an emergency clearance on July 27, 2023, and the Department is now requesting the 30-day public comment period. The Department updated the Income Driven Repayment (IDR) Request Form used by a borrower to enroll, recertify, or change their IDR plan to support the provisions identified for early implementation in the final rule published July 10, 2023, and the provisions in the FUTURE ACT related to borrower consent to use tax information for IDR participation. Specifically, the form was updated to include a new section related to the borrowers consent to use tax information for this application and on an ongoing basis and to reflect the name change of the REPAYE Plan to the SAVE Plan. The form was also updated to remove the need for spousal income information in the situation where a borrower files taxes separately from their spouse. This removes the need to collect the signature of the spouse as the spouses information is no longer necessary to participate in any IDR plan. Other updates were made to improve readability and the borrower experience. There have been no further changes to the form since the emergency clearance was approved.

Dated: December 6, 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. 2023–27104 Filed 12–8–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0206]

Agency Information Collection Activities; Comment Request; Comprehensive Transition Program (CTP) for Disbursing Title IV Aid to Students With Intellectual Disabilities Expenditure Report

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 9, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0206. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Comprehensive Transition Program (CTP) for Disbursing Title IV Aid to Students with Intellectual Disabilities Expenditure Report.

OMB Control Number: 1845–0113.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 163.

Total Estimated Number of Annual Burden Hours: 326.

Abstract: This is a request for an extension of the current information collection 1845–0113 Financial Assistance for Students with Intellectual Disabilities Expenditure Report. There have been no changes to the regulatory requirements for this collection.

The Higher Education Opportunity Act, Public Law 110–315, added provisions to the Higher Education Act, as amended (HEA) in sections 760 and 766 that enable eligible students with intellectual disabilities to receive Federal Pell Grant (Pell), Supplemental Educational Opportunity Grant (FSEOG), and Federal Work Study (FWS) funds if they are enrolled in an approved program. This collection provides the method for institutions to report the number of Pell Grant, SEOG and FWS funds used for such a purpose.

Dated: December 5, 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. 2023–27042 Filed 12–8–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Revision

AGENCY: Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a revision of currently approved collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before February 9, 2024. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Kathryn Clarke, U.S. Department of Energy, Office of Energy Jobs, 1000 Independence Avenue SW, Washington, DC 20585 or by *Kathryn.clarke@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Kathryn Clarke, *Kathryn.clarke@hq.doe.gov,* (240) 429–3482.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–5179;

(2) *Information Collection Request Titled:* United States Energy and Employment Report;

(3) *Type of Review:* Revision;

(4) *Purpose:* The rapidly changing nature of energy production, distribution, and consumption throughout the U.S. economy is having a dramatic impact on job creation and economic competitiveness, but is inadequately understood and, in some cases, incompletely measured by traditional labor market tools. The U.S. Energy and Employment Report Survey collects data from in-scope industries and then quantifies and qualifies employment energy activities, workforce demographics and the industry's perception on the difficulty of recruiting qualified workers. The data is used to generate an annual U.S. Energy and Employment Report. This revision to the data collection will provide more targeted insight on the construction sector for energy manufacturing and infrastructure as well as Puerto Rico and the U.S. Virgin Islands.

(5) *Annual Estimated Number of Respondents:* 37,500;

(6) *Annual Estimated Number of Total Responses:* 37,500;

(7) *Annual Estimated Number of Burden Hours:* 8,736;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $358,438.00.

Statutory Authority: Sec. 301 of the Department of Energy Organization Act (42 U.S.C. 7151); sec. 5 of the Federal Energy Administration Act of 1974 (15 U.S.C. 764); and sec. 103 of the Energy Reorganization Act of 1974 (42 U.S.C. 5813).

Signing Authority

This document of the Department of Energy was signed on December 5, 2023, by Betony Jones, Director, Office of Energy Jobs, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–27136 Filed 12–8–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2023–0584, FRL–11584–01–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Air Emission Standards for Tanks, Surface Impoundments, OMB Control No. 2060–0318

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), ''Air Emission Standards for Tanks, Surface Impoundments and Containers,'' EPA ICR No. 1593.12, OMB Control No. 2060–0318 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through April 30, 2024. This notice allows for 60 days for public comments.

DATES: Comments must be submitted on or before February 9, 2024.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2023–0584, at *https://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0453; *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through April 30, 2024. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

This notice allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate forms of information technology. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 264, subpart A and 40 CFR 265, subpart A), as well as for the specific requirements at 40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during

which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Business or other for-profit.

Respondent's obligation to respond: Mandatory (40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC).

Estimated number of respondents: 6,760.

Frequency of response: On occasion.

Total estimated burden: 775,000 hours per year. Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $105,500,000 (per year), which includes $13,500,000 annualized capital or operation & maintenance costs.

Changes in estimates: The burden hours are likely to stay substantially the same.

Dated: December 1, 2023.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2023–27110 Filed 12–8–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OGC; DA 23–1112; FR ID: 189138]

The Office of General Counsel Announces Posting of Plain-Language Summaries

AGENCY: Federal Communications Commission.

ACTION: Notice of availability.

SUMMARY: The Office of General Counsel announces that the Federal Communications Commission (FCC) has posted on fcc.gov (*https://www.fcc.gov/proposed-rulemakings*) plain-language summaries of its Notices of Proposed Rulemaking, Further Notices of Proposed Rulemaking, and certain Public Notices that have been published in the **Federal Register** since July 25, 2023. The summaries provide an interested non-specialist with a brief overview of the FCC's proposed rules to facilitate public engagement with the rulemaking, consistent with the Providing Accountability Through Transparency Act of 2023.

DATES: *Availability Date:* December 11, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wade Lindsay, Office of General Counsel, at *wade.lindsay@fcc.gov* or (202) 418–1557.

SUPPLEMENTARY INFORMATION: The Office of General Counsel announces posting of plain-language summaries. Effective July 25, 2023, the Providing Accountability Through Transparency Act of 2023, Public Law 118–9, amended section 553(b) of the Administrative Procedure Act by adding paragraph (4). New section 553(b)(4) requires each government agency, when it is required to publish notice of a rule making in the **Federal Register**, to include a link to a plain-language summary of not more than 100 words of the proposed rule and to post that summary on the website used for agency electronic rulemaking dockets. The FCC is complying with this new requirement by posting online a summary of each new Notice of Proposed Rulemaking (NPRM), Further Notice of Proposed Rulemaking (FNPRM), and Public Notice (PN) seeking comment published in the Proposed Rules section of the **Federal Register** after July 25, 2023. This list of plain-language summaries does not include summaries of final rules, if adopted. The plain-language summaries are being posted on a web page hosted on fcc.gov, *https://www.fcc.gov/proposed-rulemakings.*

To facilitate public engagement with the FCC's rulemakings, each NPRM, FNPRM, and PN the FCC publishes in the Proposed Rules section of the **Federal Register** now includes language directing the reader to the plain-language summary web page, *https://www.fcc.gov/proposed-rulemakings.* Below is a list of NPRMs, FNPRMs, and PNs published in the Proposed Rules section of the **Federal Register** after July 25, 2023, that did not include such language. Brief plain-language summaries of the following NPRMs, FNPRMs, and PNs are available on *https://www.fcc.gov/proposed-rulemakings.*

1. *Expanding Flexible Use of the 3.7 to 4.2 GHz Band,* GN Docket No. 18–122, Public Notice, DA 23–958 (rel. Oct. 13, 2023).

2. *Amendment of Section 73.622(j)) Television Broadcast Stations (Wittenberg and Shawano, Wisconsin),* MB Docket No. 23–336, RM–11967, Notice of Proposed Rulemaking, DA 23–936 (rel. Oct. 6, 2023).

3. *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Jacksonville, Oregon),* MB Docket No. 23–285, RM–11959, Notice of Proposed Rulemaking, DA 23–904 (rel. Sept. 28, 2023).

4. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program,* CG Docket No. 03–123, CG Docket No. 10–51, Report and Order and Further Notice of Proposed Rulemaking, FCC 23–78 (rel. Sept. 28, 2023).

5. *Establishing a 5G Fund for Rural America,* GN Docket No. 20–32, Further Notice of Proposed Rulemaking, FCC 23–74 (Sept. 22, 2023).

6. *Expediting Initial Processing of Satellite and Earth Station Applications; Space Innovation,* IB Docket No. 22–411, IB Docket No. 22–271, Report and Order and Further Notice of Proposed Rulemaking, FCC 23–73 (rel. Sept. 22, 2023).

7. *In the Matter of Numbering Policies for Modern Communications; Telephone Number Requirements for IP-Enabled Service Providers; Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources; Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership,* WC Docket No. 13–97, WC Docket No. 07–243, WC Docket No. 20–67, IB Docket No. 16–155, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 23–75 (rel. Sept. 22, 2023).

8. *Allocation of Spectrum for Non-Federal Space Launch Operations Amendment of Part 2 of the Commission's Rules for Federal Earth Stations Communicating with Non-Federal Fixed Satellite Service Space Stations; and Federal Space Station Use of the 399.9–400.05 MHz Band,* ET Docket No. 13–115, RM–11341, Second Report and Order and Second Further Notice of Proposed Rulemaking, DA 23–76 (rel. Sept. 22, 2023).

9. *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (La du Flambeau, Wisconsin),* MB Docket No. 23–302, RM–11965, Notice of Proposed Rulemaking, DA 23–813 (rel. Sept. 6, 2023).

10. *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Des Moines, Iowa),* MB Docket No. 23–296, RM–11964, Notice of Proposed Rulemaking, DA 23–774 (rel. Aug. 29, 2023).

11. *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Winnemucca, Nevada),* MB Docket No. 23–286, RM–11960, Notice of Proposed Rulemaking, DA 23–749 (rel. Aug. 23, 2023).

12. *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Idaho Falls, Idaho),* MB Docket No. 23–287, RM–11961, Notice of Proposed Rulemaking, DA 23–750 (rel. Aug. 23, 2023).

13. *Possible Revision or Elimination of Rules,* Public Notice, DA 23–710 (rel. Aug. 17, 2023).

14. *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Tulare, California),* MB Docket No. 23–279, RM–11956, Notice of Proposed Rulemaking, DA 23–703 (rel. Aug. 16, 2023).

15. *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Colusa, California),* MB Docket No. 23–280, RM–11957, Notice of Proposed Rulemaking, DA 23–705 (rel. Aug. 16, 2023).

16. *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Alamogordo, New Mexico),* MB Docket No. 23–281, RM–11958, Notice of Proposed Rulemaking, DA 23–706 (rel. Aug. 16, 2023).

17. *In the Matter of Cybersecurity Labeling for Internet of Things,* PS Docket No. 23–239, Notice of Proposed Rulemaking, FCC 23–65 (rel. Aug. 6. 2023).

18. *Rates for Interstate Inmate Calling Services,* WC Docket No. 23–62, WC Docket No. 12–375, Public Notice, DA 23–656 (rel. Aug. 3, 2023).

19. *Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems,* MB Docket No. 22–405, Order and Notice of Proposed Rulemaking, FCC 23–61 (rel. Aug. 1, 2023).

20. *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible To Receive Universal Service Support; Connect America Fund—Alaska Plan; Expanding Broadband Service Through the ACAM Program,* WC Docket No. 10–90, WC Docket No. 14–58, WC Docket No. 09–197, WC Docket No. 16–271, RM–11868, Notice of Proposed Rulemaking, FCC 23–60 (rel. July 23, 2023).

21. *Access to Video Conferencing; Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, et al.,* CG Docket No. 23–161, CG Docket No. 10–213, CG Docket No. 03–123, Report and Order, Notice of Proposed Rulemaking, and Order, FCC 23–50 (June 12, 2023).

22. *Shared Use of the 42–42.5 GHz Band,* WT Docket No. 23–158, GN Docket No. 14–177, Notice of Proposed Rulemaking, FCC 23–51 (rel. June 9, 2023).

23. *Review of International Authorizations To Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees,* IB Docket No. 23–119, MD Docket No. 23–134, Order and Notice of Proposed Rulemaking, FCC 23–28 (rel. Apr. 25, 2023).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–27103 Filed 12–8–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 19–329; FR ID 189297]

Federal Advisory Committee Act; Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States

ACTION: Notice of renewal.

SUMMARY: The Federal Communications Commission (FCC or Commission) hereby announces that the charter of the Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States (the Task Force) has been renewed for a period expiring on January 1, 2025, pursuant to the Federal Advisory Committee Act (FACA) and after consultation with the Committee Management Secretariat, General Services Administration.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Designated Federal Officer, Federal Communications Commission, Wireline Competition Bureau, (202) 418–0646, or email: *christi.shewman@fcc.gov*; Thomas Hastings, Deputy Designated Federal Officer, Federal Communications Commission, Wireless Telecommunications Bureau, (202) 418–1343, or email *thomas.hastings@fcc.gov*; or Emily Caditz, Deputy Designated Federal Officer, Wireline Competition Bureau, (202) 418–2268 or email *emily.caditz@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Chairwoman of the Commission, as required by Section 12511 of the Agriculture Improvement Act of 2018, Public Law 115–334, 132 Stat 4490, has taken appropriate steps to renew the Task Force, which Congress has deemed necessary and in the public interest. After consultation with the General Services Administration, the Commission renewed the charter on November 29, 2023, providing the Task Force with authorization to operate until January 1, 2025.

In consultation with the Secretary of Agriculture (Secretary), or a designee of the Secretary, and in collaboration with public and private stakeholders in the agriculture and technology fields, the purpose of the Task Force is to: identify and measure current gaps in the availability of broadband internet access service on agricultural land; develop policy recommendations to promote the rapid, expanded deployment of broadband internet access service on unserved agricultural land, with a goal of achieving reliable capabilities on 95 percent of agricultural land in the United States by 2025; promote effective policy and regulatory solutions that encourage the adoption of broadband internet access service on farms and ranches and promote precision agriculture; recommend specific new rules or amendments to existing rules of the Commission that the Commission should issue to achieve the goals and purposes of the policy recommendations described in the second item in this list; recommend specific steps that the Commission should take to obtain reliable and standardized data measurements of the availability of broadband internet access service as may be necessary to target funding support, from future programs of the Commission dedicated to the deployment of broadband internet access service, to unserved agricultural land in need of broadband internet access service; and recommend specific steps that the Commission should consider to ensure that the expertise of the Secretary and available farm data are reflected in future programs of the Commission dedicated to the infrastructure deployment of broadband internet access service and to direct available funding to unserved agricultural land where needed.

In addition, annually, the Task Force will submit to the Chairwoman of the Commission a report, which shall be made public, that details: the status of fixed and mobile broadband internet access service coverage of agricultural land; the projected future connectivity needs of agricultural operations, farmers, and ranchers; and the steps being taken to accurately measure the availability of broadband internet access service on agricultural land and the limitations of current, as of the date of the report, measurement processes.

Advisory Committee

The Task Force is organized under and operates in accordance with, the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2). The Task Force is solely advisory in nature. Consistent with FACA and its requirements, each meeting of the Task Force will be open to the public unless otherwise noticed. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. All activities of the Task Force will be conducted in an open, transparent, and accessible manner. The Task Force shall terminate on January 1, 2025, as required by Agriculture Improvement Act of 2018, Public Law 115–334, 132 Stat 4490, sec. 12511(b)(6). All meeting dates and agenda topics will be described in a Public Notice issued and published in the **Federal Register** at least fifteen (15) days prior to the first meeting date. In addition, working groups or subcommittees (ad hoc or steering), will continue to facilitate the Task Force's work between meetings of the full Task Force. Meetings of the Task Force will be fully accessible to individuals with disabilities.

Accessible Formats: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

(5 U.S.C. App 2 10(a)(2))

Federal Communications Commission.

Jodie May,

Division Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2023–27071 Filed 12–8–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Reports of Foreign Banking Organizations (FR Y–7N, FR Y–7NS, and FR Y–7Q; OMB No. 7100–0125).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Reports of Foreign Banking Organizations.

Collection identifier: FR Y–7N, FR Y–7NS, and FR Y–7Q.

OMB control number: 7100–0125.

Effective Date: December 31, 2023, as-of date for FR Y–7Q respondents that are also required to file the FR Y–15 report; December 31, 2024, for all other FR Y–7Q respondents.

General description of collection: The FR Y–7N and FR Y–7NS collect financial information for certain non-functionally regulated U.S. nonbank subsidiaries held by foreign banking organizations (FBOs) other than through a U.S. bank holding company (BHC), financial holding company (FHC), or U.S. bank. For purposes of these reports, an FBO is a foreign bank that operates a branch, agency, or commercial lending company subsidiary in the United States; controls a bank in the United States; or controls an Edge corporation acquired after March 5, 1987.[1] FBOs file the FR Y–7N quarterly or annually or the FR Y–7NS annually predominantly based on asset size thresholds. The FR Y–7Q collects consolidated regulatory capital information from all FBOs either quarterly or annually.

The Federal Reserve uses the data collected on the FR Y–7N, FR Y–7NS, and FR Y–7Q to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with applicable U.S. laws and regulations.

Frequency: Quarterly, annually.

Respondents: FR Y–7N/NS: Non-functionally regulated U.S. nonbank subsidiaries held by FBOs other than through a BHC, FHC, or U.S. bank; FR Y–7Q: All FBOs.

Total estimated number of respondents: 210.

Total estimated change in burden: 510.

Total estimated annual burden hours: 2,610.[2]

Current actions: On May 27, 2022, the Board published a notice in the **Federal Register** (87 FR 32614) requesting public comment for 60 days on the extension, with revision, of the FR Y–7N, FR Y–7NS, and FR Y–7Q. The Board proposed to revise the FR Y–7Q report to: (1) add a line item on Part 1A., Capital and Asset Information for the Top-tier Foreign Banking Organization, to collect the total combined U.S. assets net of intercompany balances and transactions on a quarterly average basis; (2) remove the option of filing on a fiscal year basis and to instead require the respondent to file on a calendar period basis; (3) change the filing deadline from 90 days after quarter-end to 30 days after quarter-end for quarterly filers and from 90 days after quarter-end to 45 days for annual filers; (4) remove line item 8, as-of financial date, in Part 1A and line item 6, as-of financial date, in Part 2, as the elimination of the fiscal year basis reporting makes these items unnecessary; and (5) make other minor clarifications and conforming edits to the form and instructions. The comment period for this notice expired on July 26, 2022.

Detailed Discussion of Public Comments

The Board received a joint comment from two trade associations and a comment from an individual banking organization, as well as additional feedback through industry outreach. The commenters did not support the proposed revisions.

Commenters expressed concern that the proposed line item for top-tier FBOs to report total combined U.S. assets net of intercompany balances and transactions on a quarterly average using daily data would impose significant operational costs on FBOs that do not currently perform the calculation. Specifically, commenters recommended instead to require the line item only for FBOs that file the FR Y–15 and are in Categories II and III (and potentially Category IV) of the enhanced prudential standards applicable to FBOs under Regulation YY. Commenters also recommended a longer implementation period and allowing averaging for the line item to use monthly data when calculating the averages.

In response to the comments received, the Board has decided to implement the new line item 6(b) as an average combined U.S. operations asset calculation using monthly data. The calculation would consist of providing the average of the three month-end balances within the quarter. Annual filers would provide the average of the three month-end balances of the fourth quarter of that filing year. Respondents that currently file the FR Y–15 would have this line item automatically retrieved to the FR Y–7Q from the FR Y–15. The Board believes the modified

[1] 12 CFR 211.21(o).

[2] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR Y–7N, FR Y–7NS, and FR Y–7Q.

requirement accommodates required updates to FBO reporting systems.

Commenters also recommended retaining the option for FBOs to file the FR Y–7Q on a fiscal year basis. Commenters stated that FBOs that follow a non-calendar fiscal year base their home country reporting requirements, internal and external financial reporting, and management information systems around the 90-day filing deadline for the FR Y–7Q.

In response to the comments received, the Board will move forward with a modified approach so that *only* the following three items that capture U.S. assets would be required to be filed on a calendar period basis: Line item 6(a)—Total combined U.S. assets net of intercompany balances and transactions; Line item 6(b)—Total combined U.S. assets net of intercompany balances and transactions, based on a quarterly average; and Line item 7—Total on-branch assets. The remaining line items on the FRY–7Q will continue to be collected with fiscal filing as an option.

The Board has also decided to retain line item 8, as-of financial date, in Part 1A and line item 6, as-of financial date, in Part 2, in order to continue the use of the fiscal filing option, which will only apply to non-U.S. asset line items. FR Y–7Q respondents that are required to file the FR Y–15 would have already submitted total combined U.S. assets net of intercompany balances and transactions, given that the FR Y–15 is due 50 calendar days after March 31, June 30 and September 30, and 65 days after December 31. Individual respondents that believe the information they are required to submit under the FR Y–7Q is nonpublic commercial or financial information, which is both customarily and treated as private by the respondent, may request confidential treatment of such information under exemption 4 of the FOIA.

Finally, commenters expressed concern about shortening the filing deadline for the FR Y–7Q because firms may need more than 30 days to provide capital adequacy information to their home country supervisor before they report it on the FR Y–7Q. Commenters stated that modifying home country reporting frameworks to file the information on an accelerated timetable based on the FR Y–7Q would require significant resources.

In response to the comments received, the Board has modified the proposal to stagger implementation filing deadlines. The modified proposal would be implemented in two phases. Under phase one, effective as of December 31, 2023, all FR Y–7Q filers that file the FR Y–15 would report no later than 70 days after the report date. The remaining filers would have 90 days to file the FR Y–7Q after calendar end. Under phase two, effective as of December 31, 2024, all remaining FR Y–7Q filers would report no later than 70 days after the report date. Moving this implementation date to December 31, 2024, from the originally proposed December 31, 2022, would allow additional time for respondents to implement the necessary system enhancements. Further, fiscal filers with a report date after the calendar quarter-end periods (*e.g.* January 31, April 30, July 31 and October 31) inherently have additional time to submit the FR Y–7Q.

Board of Governors of the Federal Reserve System, December 5, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–27055 Filed 12–8–23; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–1385; Docket No. CDC–2024–0098]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Characteristics of Cases of Priority Fungal Diseases. These case report forms (CRFs) collect information on patient demographics, underlying conditions, diagnosis, treatments, healthcare utilization, and outcomes of patients with coccidioidomycosis, histoplasmosis, blastomycosis, *Candida auris,* triazole-resistant *Aspergillus fumigatus* infection or colonization, or antifungal-resistant dermatophytosis.

DATES: CDC must receive written comments on or before February 9, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0098 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Characteristics of Cases of Priority Fungal Diseases (OMB Control No. 0920–1385, Exp. 3/31/2026)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Fungal diseases cause substantial illness, ranging from mild infection to severe or life-threatening invasive disease. They also constitute a considerable financial burden on patients and healthcare systems. Awareness of fungal diseases is low, and data collection has historically been limited in size, scope, and coordination, which has hindered our understanding of these diseases. Detailed epidemiologic and clinical data are critical to inform appropriate public health responses.

We plan to enhance surveillance of high priority fungal diseases across the United States to better characterize factors such as disease burden, geographic scope, patient risk factors, health disparities, healthcare utilization, outcomes, and emerging trends. This project will serve as a Revision of the information collections project: Triazole-resistant Aspergillus fumigatus Case Report Form (CRF). The Revision will expand the number of fungal diseases for which data may be collected. In addition to triazole-resistant *A. fumigatus* infections, CRFs have also been developed for coccidioidomycosis, histoplasmosis, blastomycosis, *C. auris,* and antifungal-resistant dermatophytosis. CDC is also changing the name of this information collections project from Triazole-resistant Aspergillus fumigatus Case Report Form to Characteristics of Cases of Priority Fungal Diseases.

We plan to use standardized CRFs to collect public health surveillance data for cases of these diseases regarding demographics (*e.g.,* age, sex, race/ethnicity, location of residence), underlying medical conditions, diagnosis (*e.g.,* clinical presentation, laboratory testing), treatments, and outcomes (*e.g.,* hospitalization, vital status). The corresponding CRF would be filled out voluntarily by State and local health departments and contains a section for medical chart review and an optional supplemental interview (including data on potential occupational or environmental exposures) of the patient or their representative. Findings can help identify populations at higher risk of these diseases, detect emerging epidemiologic trends, and guide prevention and response efforts. They can also help better focus public and healthcare provider outreach, inform efforts to contain or mitigate spread, and influence health policy and research on prevention and treatment.

CDC requests OMB approval for an estimated 1,138 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State and Local Health Departments	Characteristics of Patients with Environmentally-derived Triazole-resistant *Aspergillus fumigatus*.	15	15	30/60	113
State and Local Health Departments	Characteristics of Patients with Coccidioidomycosis.	10	25	1	250
State and Local Health Departments	Characteristics of Patients with Histoplasmosis.	10	25	1	250
State and Local Health Departments	Characteristics of Patients with Blastomycosis.	10	25	1	250
State and Local Health Departments	Characteristics of Patients with *Candida auris*.	15	20	45/60	225
State and Local Health Departments	Characteristics of Patients with Antifungal-resistant Dermatophytosis.	10	10	30/60	50
Total					1,138

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–27081 Filed 12–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–24BJ; Docket No. CDC–2023–0097]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled DP–23–0002 Healthy Schools Evaluation. The project

aims to evaluate processes and outcomes of the programs of 20 State entities funded by CDC's Healthy Schools Branch to improve health, academic achievement, and well-being of students in K–12 schools nationwide.

DATES: CDC must receive written comments on or before February 9, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0097 by either of the following methods:

☐ *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

☐ *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

CDC–RFA–DP–23–0002 Healthy Schools Program Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC awarded funds through cooperative agreement DP23–0002 (2302 Program) to 20 funding recipients (States, universities, and a Tribal nation) to improve health, academic achievement, and well-being of students in K–12 schools. A portion of the funding within each State is allocated to one priority local education agency (LEA) and its corresponding schools to support the implementation of policies, practices, and programs to increase physical activity, healthy dietary behaviors, and management of chronic health conditions among students. CDC is conducting a mixed-methods multi-level evaluation of the 2302 Program and associated outcomes. Evaluation findings will allow CDC to help recipients improve their programs as they progress over the five-year funding period. A CDC evaluation contractor will collect information from relevant funded recipients, priority LEAs, schools, and students. Program monitoring information will be collected from recipients via a monthly reporting tool. Descriptions of the implementation of the program's two strategies and nine activities will be collected in years two and four via semi-structured, virtual key informant interviews with program leaders among funded recipients and their priority LEA colleagues to understand successes, barriers, and lessons learned. Additionally, two annual questionnaires will be distributed either digitally (web-based) and/or on paper. One of the questionnaires is for school-level leaders in participating schools in the 20 priority LEAs focusing on implementation of healthy school policies, practices, and programs. The other questionnaire is for students in elementary, middle, and high schools (grades 4–12) in the priority LEAs' schools focusing on physical activity, dietary behaviors, management of chronic health conditions, and well-being and academic attainment. The evaluation results will help recipients improve their programs and aid CDC in understanding and communicating the impact of its funding. We

CDC requests approval for the period of three years, with an anticipated request for an extension after that to cover the full five years of the program. The annual estimated total time burden to participants is 810 hours. There are no anticipated financial costs to participants other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Recipient personnel	Recipient Monthly Reporting	20	12	15/60	60
Recipient and priority LEA personnel	Interviews	60	1	40/60	40
School personnel	Healthy Schools Survey	100	1	30/60	50
Students	Healthy Students Survey	2,000	1	20/60	660
Total					810

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–27080 Filed 12–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–23–003, Panel A, Occupational Safety and Health Education and Research Centers (ERC).

Dates: February 26–27, 2024.

Times: 11 a.m.–5 p.m., EST.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone: (304) 285–5951; Email: *MGoldcamp@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–27206 Filed 12–7–23; 1:00 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Administration for Children and Families Generic for Engagement Efforts (New Umbrella Generic)

AGENCY: Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) at the United States Department of Health and Human Services (HHS) intends to request approval from the Office of Management and Budget (OMB) to establish a new umbrella generic clearance to request information while engaging individuals and groups who could provide valuable information to inform ACF programs and work, including but not limited to those who are served or have been served by ACF, those with expertise in ACF program areas, and individuals invested in the outcomes of ACF research and evaluation. These engagement activities often need to be conducted quickly, to allow for sufficient time to inform project direction and decision-making. Additionally, planning for engagement activities is most often on a quick timeline and the standard timeline to comply with a full request under the Paperwork Reduction Act (PRA) often inhibits the ability to collect information to inform these activities. Therefore, an umbrella generic is necessary to allow for quick turnaround requests for similar information collections related to these activities.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Executive Order (E.O.), Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985) [1] emphasizes consulting with communities that have been historically underserved by Federal policies and programs and those with lived experience [2] in ACF programs. The E.O. on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government [3] followed in 2023 and built on E.O. 13985, calling upon agencies to increase engagement with underserved communities and to ''collaborate with OMB, as appropriate, to identify and develop tools and methods'' to meet this goal. This generic mechanism is a tool that could directly address these EOs. Particularly many requirements outlined in Sec 3 and Sec 5 of the 2023 E.O.

Additionally, the Presidential Memorandum on Restoring Trust in Government through Scientific Integrity and Evidence-Based Policy Making,[4] the Department of Health and Human Services (HHS) Strategic Plan FY 2022–2026,[5] ACF's Strategic Plan,[6] and the ACF Evaluation Policy [7] discuss community engagement and inclusion in research. Consistent with these guidance documents, and to ensure meaningful involvement with a variety of individuals with diverse experiences and perspectives, ACF often conducts active engagement activities to inform various efforts, including research and evaluation.

Hearing the perspective of those affected by, experienced in, interested

[1] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

[2] Assistant Secretary for Planning and Evaluation. (2021, December). *Methods and Emerging Strategies to Engage People with Lived Experience.* (Contract Number HHSP233201500071I). U.S. Department of Health and Human Services. *https://aspe.hhs.gov/sites/default/files/documents/47f62cae96710d1fa13b0f590f2d1b03/lived-experience-brief.pdf.*

[3] *https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

[4] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/.*

[5] *https://www.hhs.gov/about/strategic-plan/2022-2026/index.html.*

[6] *https://www.acf.hhs.gov/about/acf-strategic-plan-2022.*

[7] *https://www.acf.hhs.gov/opre/report/acf-evaluation-policy.*

in, or potentially interested in ACF programs and similar programs is vital to ensure ACF is responsive to the needs of those it serves and that resources are, and programming is appropriate, useful, and relevant for audiences. Information collections under this generic would gather information from individuals with diverse experiences and perspectives to inform ACF policies and programs. The information collected would allow for ongoing, two-way collaborative and actionable communications between ACF and its state, local and/or Tribal partners, program participants, communities served or affected by ACF programs, and or others experienced with or interested in ACF programs or similar programs.

ACF envisions using information collected to inform a variety of efforts and activities such as the improvement, planning, and implementation of research studies, program changes, development and dissemination of resources and products developed under ACF studies, regulatory activities, guidance, outreach and/or training activities.

The specific types of information gathering methods included under the umbrella of this clearance will vary, but will use well-established methodologies, including but not limited to:

- Semi-structured discussions or conference calls
- Focus groups
- Telephone or in-person interviews
- Questionnaires/Surveys
- Roundtable and/or Breakout Sessions
- Open-ended requests
- Contextualizing Existing Data

Data collection will take place through a variety of activities—both in-person and virtual—dependent on the specific project. ACF will submit individual requests under this clearance. ACF requests OMB provide a response on individual generic information collections within 10 business days.

Respondents: Respondents could include current or prospective service providers, T/TA providers, grant recipients, contractors, current and potential participants in ACF programs or other comparable groups and other individuals with lived experience with ACF or similar programs, experts in fields pertaining to ACF programs, other key groups involved in ACF projects and programs, individuals engaged in program re-design or demonstration development for evaluation, state or local government officials, those in broader fields of study related to human services, or others involved in or prospectively involved in ACF programs.

Burden Estimates

The burden table below is illustrative. Estimates for the number of respondents and time per response have been made based on discussion with ACF program offices, but as this is a new umbrella generic, it may be possible that we will need to adjust estimates throughout the three-year approval period. If needed, ACF will submit a change request for these updates. While we will not exceed the total burden cap for this generic without requesting a change for updates, we may use more or less burden within each instrument type.

Example types of information collections	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
Semi-Structured Discussions and Focus Groups	10,000	1	2	20,000
Interviews	4,500	1	1	4,500
Questionnaires/Surveys	8,000	1.5	.5	6,000
Templates and Open-ended requests	1,000	1	10	10,000
Estimated Totals	23,500	.....	.....	40,500

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–27094 Filed 12–8–23; 8:45 am]

BILLING CODE 4184–88–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Office of Management and Budget #: 0970–0401)

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) proposes to extend data collection under the existing overarching Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Office of Management and Budget (OMB) #0970–0401). There are no changes to the proposed types of information collection or uses of data, but ACF is requesting an increase to the estimated number responses per respondent.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Executive Order 12862 directs federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. As outlined in Memorandum M–11–26, OMB worked with agencies to create a Fast Track Process to allow agencies to obtain

timely feedback on service delivery while ensuring that the information collected is useful and minimally burdensome for the public, as required by the Paperwork Reduction Act of 1995. ACF created this generic clearance in response to this effort by OMB.

To work continuously to ensure that the ACF programs are effective and meet our customers' needs, we use this Fast Track generic clearance process to collect qualitative feedback on our service delivery. This collection of information is necessary to enable ACF to garner customer and stakeholder feedback in an efficient, timely manner in accord with our commitment to improving service delivery. The information collected from our customers and stakeholders helps ensure that users have an effective, efficient, and satisfying experience with the programs. This feedback provides insights into customer or stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections allow for ongoing, collaborative, and actionable communications between ACF and its customers and stakeholders. They also allow feedback to contribute directly to the improvement of program management.

Per Memorandum M–11–26, information collection requests submitted under this Fast Track generic will be considered approved unless OMB notifies ACF otherwise within 5 days.

Respondents: ACF program participants, potential program participants, stakeholders, and other customers.

Annual Burden Estimates

Burden Estimates—Approved Information Collection

The request to OMB will include an extension request for approved information collections that are planned to continue beyond May 2024. Find currently approved information collections here: *https://www.reginfo.gov/public/do/PRAICList?ref_nbr=202305-0970-012.*

Burden Estimates—New Requests

The following table includes burden estimates for new requests under this generic over the next 3 years. Based on the use of this generic clearance over the past 3 years, ACF is requesting an increase to the estimated number of responses per respondent from 1 to 2.

Type of collection	Total number of respondents	Average total number of responses per respondent	Average burden hours per response for types of collections	Total burden hours
Surveys	175,000	2	.5	50,000
Comment Cards/Forms			.25	
Feedback Questions			.083	
Focus Groups, Discussions, Cognitive Studies			1	

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Social Security Act, Sec. 1110. [42 U.S.C. 1310].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–27093 Filed 12–8–23; 8:45 am]

BILLING CODE 4184–88–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2095 and FDA–2022–E–2096]

Determination of Regulatory Review Period for Purposes of Patent Extension; WELIREG

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for WELIREG and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by February 9, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 10, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. 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 February 9, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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 Nos. FDA–2022–E–2095 and FDA–2022–E–2096 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; WELIREG.'' 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.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product WELIREG (belzutifan). WELIREG is indicated for the treatment of adult patients with von Hippel-Lindau disease who require therapy for associated renal cell carcinoma, central nervous system hemangioblastomas, or pancreatic neuroendocrine tumors, not requiring immediate surgery. Subsequent to this approval, the USPTO received patent term restoration applications for WELIREG (U.S. Patent Nos. 9,908,845; 9,969,689) from Peloton Therapeutics, Inc, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 13, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of WELIREG represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for WELIREG is 1,752 days. Of this time, 1,541 days occurred during the testing phase of the regulatory review period, while 211 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* October 28, 2016. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 28, 2016.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* January 15, 2021. FDA has verified the applicant's claim that the new drug application (NDA) for WELIREG (NDA 215383) was initially submitted on January 15, 2021.

3. *The date the application was approved:* August 13, 2021. FDA has

verified the applicant's claim that NDA 215383 was approved on August 13, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 342 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–27044 Filed 12–8–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Theodoric Mattes at 240–627–3827, or *theodoric.mattes@nih.gov*. Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Vaccine for Cats To Block Toxoplasma Gondii Oocyst Shedding and Transmission

Description of Technology:

Toxoplasma gondii is the zoonotic causative agent of toxoplasmosis, a disease of significant concern for pregnant persons and livestock. A member of the phylum Apicomplexa, *Toxoplasma gondii* can infect almost any cell type found in mammals and birds. There are multiple transmission pathways, including consumption of undercooked meat from infected animals, consumption of unwashed plants, contaminated water supplies, blood transfers, and congenital transfer. Felines are considered the definitive host of *Toxoplasma gondii.* Direct or indirect transmission can occur via contact with the stool of infected felines.

Researchers at the National Institute of Allergy and Infectious Diseases (NIAID), the U.S. Department of Agriculture (USDA), and the University of South Bohemia (České Budějovice, Czechia) have demonstrated that *T. gondii* strains lacking expression of either the intracellular transport protein IFT88 or the CYS–6-type surface antigen SRS15B prevent the formation of oocysts and have potential for broad immunity to *T. gondii.* The inventors propose that mass inoculation of felines, specifically wild or feral felines, with a live vaccine developed from these strains could result in a significant reduction in oocyst production and environment contamination, reducing further infection in a geographical area. It is also proposed that loss of IFT88 or SRS15B homologs in other Apicomplexa parasites, like *Neospora, Sarcocystis,* or *Cryptosporidium* could have a similar impact.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Live vaccine for felines against *Toxoplasma gondii* infection
- Reduction in environmental *Toxoplasma gondii* oocysts

Competitive Advantages:

- 100% blocked *Toxoplasma gondii* oocyst shedding in felines
- Detectable seroconversion protective against future *Toxoplasma gondii* infection
- Scalable production strain with predictable inactivation of IFT88 or SRS15B gene
- Materials available for development or licensing

Development Stage:

- Pre-Clinical

Inventors: Michael Grigg (NIAID), Aline Sardinha da Silva (NIAID), Viviana Pszenny (NIAID), Jitender Dubey (USDA), and Julius Lukeš (University of South Bohemia, Czechia).

Intellectual Property: HHS Reference No. E–118–2023–2. U.S. Provisional Patent Application No. 63/470,773 filed June 4, 2023.

Licensing Contact: To license this technology, please contact Theodoric Mattes at 240–627–3827, or *theodoric.mattes@nih.gov.,* and reference E–118–2023–2.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. For collaboration opportunities, please contact Theodoric Mattes at 240–627–3827, or *theodoric.mattes@nih.gov*.

Dated: December 5, 2023.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2023–27113 Filed 12–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Theodoric Mattes at 240–627–3827, or *theodoric.mattes@nih.gov*. Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Recombinant IgG Monoclonal Antibody-Based Detection of Taenia Antigen In Humans And Pigs

Description of Technology: The pork tapeworm, *Taenia solium,* is endemic in most of Asia, Latin America, and Sub-Saharan Africa. The risk of infection is increased in regions where pigs are raised in closed proximity to humans, with migration from endemic regions being directly proportional to the prevalence of infection in high-income countries. Human infection by *T. solium* occurs following oral ingestion of eggs passed in human feces from an infected carrier. The larvae can travel anywhere in the human body. Neurocysticercosis (NCC) occurs when the larvae traverse the blood-brain barrier and penetrate the central nervous system. Diagnosis of NCC is typically made through radiological imaging studies (such as computed tomography or magnetic resonance imaging) to visualize the morphology, stage, and location of the cysts.

Investigators at NIAID have developed the recombinant IgG monoclonal antibody known as TsG10, which can target *T. solium* circulating antigens. An expression vector to produce TsG10 is available for expression in mammalian cell lines. The resulting construct allows for a scalable, repeatable, and broadly accessible production of monoclonal antibodies for both human and veterinary use. The TsG10 monoclonal antibodies are adaptable for plate-based diagnostic assays like ELISAs, to support a diagnosis of NCC.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Plate-based diagnostic immunoassays, both human and veterinary, for the detection of *T. solium* circulating antigen
- Production of TsG10 recombinant monoclonal antibodies

Competitive Advantages:

- Detection of active *T. solium* infection
- Scalable and repeatable production of a monoclonal antibody targeting *T. solium*
- Materials available for development or licensing

Development Stage:

- Research Material

Inventors: Drs. Thomas B. Nutman, Elise O'Connell, Theodore E. Nash, Siddhartha Mahanty, Hector Garcia, Adriana Paredes, all of NIAID

Intellectual Property: HHS Reference No. E–043–2022–0

Licensing Contact: To license this technology, please contact Theodoric Mattes at 240–627–3827, or *theodoric.mattes@nih.gov.,* and reference E–043–2022–0.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. For collaboration opportunities, please contact Theodoric Mattes at 240–627–3827, or *theodoric.mattes@nih.gov*.

Dated: December 5, 2023.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2023–27114 Filed 12–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Brian Bailey, Ph.D.; 240–669–5128 or 301–201–9217; *bbailey@mail.nih.gov*. Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852: tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Enhanced Immune Response With Stabilized Norovirus VLPs: A Next-Generation Vaccine Approach

Description of Technology: This technology includes a novel advancement in developing vaccines targeting norovirus, tailored specifically for a more robust and effective response. It centers around an improved version of Virus-Like Particles (VLPs) uniquely engineered for greater stability and efficacy. These enhanced VLPs are designed to remain intact even when faced with the body's immune responses, overcoming a key limitation of previous vaccine designs. This stability is crucial in ensuring the vaccine's effectiveness, particularly in individuals with more robust immune systems who have shown limited response to traditional vaccines. Additionally, the modified VLPs are likely more resistant to degradation, making them a more reliable and durable solution in vaccination campaigns. This innovation could be a significant step in offering a more effective vaccine option for widespread use.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- *Enhanced Norovirus Vaccination:* Specially designed to improve the effectiveness of vaccines against norovirus, particularly in individuals with previously low response rates to traditional vaccines.
- *Broad-Scale Immunization Programs:* Suitable for large-scale public health initiatives due to its increased

stability and durability, potentially reducing the frequency of booster shots.

• *Platform for Future Vaccine Development:* The stabilization techniques used in this technology could be applied to other vaccine formulations, paving the way for more robust and effective vaccines against various pathogens.

Competitive Advantages:

• Provides enhanced stability and efficacy in norovirus VLP vaccines, ensuring effectiveness even in individuals with strong immune responses who have previously shown limited vaccine response.

• Its innovative design increases the VLPs' resistance to degradation, offering a more durable and reliable option for large-scale immunization programs.

Development Stage:

• Pre-Clinical.

Inventors: Lisa Lindesmith, Ralph Baric, George Georgiou, Peter Kwong, Raffaello Veradi, Yaroslav Tsybovsky, Jason Gorman, Gwo-Yu Chuang and Li Ou, all of NIAID.

Publications: Lu, Yuan et al. ''Assessing sequence plasticity of a virus-like nanoparticle by evolution toward a versatile scaffold for vaccines and drug delivery.'' *Proceedings of the National Academy of Sciences of the United States of America* vol. 112,40 (2015): 12360–5. DOI: 10.1073/pnas.1510533112 at *https://doi.org/10.1073/pnas.1510533112;* Porta, Claudine et al. ''Rational engineering of recombinant picornavirus capsids to produce safe, protective vaccine antigen.'' *PLoS pathogens* vol. 9,3 (2013): e1003255. DOI: 10.1371/journal.ppat.1003255 *at https://doi.org/10.1371/journal.ppat.1003255;* Mateo, Roberto et al. ''Engineering viable foot-and-mouth disease viruses with increased thermostability as a step in the development of improved vaccines.'' *Journal of virology* vol. 82,24 (2008): 12232–40. DOI: 10.1128/JVI.01553–08 *at https://doi.org/10.1128/jvi.01553-08;* Bertolotti-Ciarlet, Andrea et al. ''Structural requirements for the assembly of Norwalk virus-like particles.'' *Journal of virology* vol. 76,8 (2002): 4044–55. DOI: 10.1128/jvi.76.8.4044–4055.2002 *at https://doi.org/10.1128/jvi.76.8.4044-4055.2002;* Prasad, B V et al. ''X-ray crystallographic structure of the Norwalk virus capsid.'' *Science (New York, N.Y.)* vol. 286,5438 (1999): 287–90. DOI: 10.1126/science.286.5438.287 *at https://doi.org/10.1126/science.286.5438.287.*

Intellectual Property: HHS Reference No. E–178–2019–0; U.S. Provisional Patent Application No. 63/091,824, filed on October 14, 2020; PCT Patent Application No. PCT/US2021/55018, filed October 14, 2021; U.S. National Stage patent application, U.S. 18/031,602, filed April 12, 2023.

Licensing Contact: To license this technology, please contact Brian Bailey, Ph.D.; 240–669–5128 or 301–201–9217; *bbailey@mail.nih.gov,* and reference E–178–2019.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. For collaboration opportunities, please contact Brian Bailey, Ph.D.; 240–669–5128 or 301–201–9217; *bbailey@mail.nih.gov.*

Dated: December 5, 2023.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2023–27112 Filed 12–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis, Panel SEP–1: NCI Clinical and Translational Cancer Research, February 7, 2024, 9:00 a.m. to February 7, 2024, 5:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W108, Rockville, Maryland, 20850 which was published in the **Federal Register** on November 17, 2023, FR Doc. 2023–25490, 88 FR 80322.

This notice is being amended to change the meeting date from February 7, 2024, to February 20, 2024. The meeting location and time will stay the same. The meeting is closed to the public.

Dated: December 5, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–27069 Filed 12–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0033; OMB No. 1660–NW171]

Agency Information Collection Activities: Proposed Collection, Comment Request; Generic Clearance for FEMA's Collection of Feedback on Customer Satisfaction and Disaster Recovery

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a new information collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning a generic clearance to collect feedback from applicants on service delivery and their subsequent disaster recovery.

DATES: Comments must be submitted on or before February 9, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2023–0033. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used to submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wisht to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin Brooks, Statistician, FEMA's Recovery Reporting and Analytics Division, Customer Survey and Analysis Section, at (202) 826–6291 or *Kristin.Brooks@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 12862, ''Setting Customer Service

Standards,'' requires that all Federal Agencies implement customer service standards and provide services to the public that matches or exceeds the best service available in the private sector. To accomplish this, Federal Agencies are required to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

The Government Performance and Results Act (GPRA) of 2010 also requires quarterly performance assessments of Government programs for purposes of assessing agency performance and improvement. One of the primary goals of GPRA is to improve Federal program effectiveness and public accountability by promoting a focus on results, service quality, and customer satisfaction.

The Foundations for Evidence-Based Policymaking Act of 2018 (''Evidence Act'') supports that data collection and analysis are important inputs to be used as evidence for prioritizing agency efforts to support civic engagement, delivering on mission, service, and stewardship objectives, and supporting decision-making.

FEMA seeks Office of Management and Budget (OMB) approval for a generic clearance to collect feedback from applicants on service delivery and their subsequent disaster recovery. The Agency has numerous touchpoints with applicants through several specialized customer-facing programs. The feedback collected from applicants may be quantitative or qualitative in nature depending on the population of interest, specific research questions, and the types of required analysis.

Collection of Information

Title: Generic Clearance for FEMA's Collection of Feedback on Customer Satisfaction and Disaster Recovery.

Type of Information Collection: New information collection.

OMB Number: 1660–NW171.

FEMA Forms: Not Applicable.

Abstract: Federal Agencies are required to survey their customers to determine the kind and quality of services they want and their level of satisfaction with those services. In order for the Agency to maintain customer service standards, there must be continuous assessment of service delivery throughout all phases of the customer journey. The Agency will collect, analyze, and interpret information gathered from this generic clearance to identify strengths and weaknesses with program delivery.

Affected Public: Individuals and Households; State, Local or Tribal Governments.

Estimated Number of Respondents: 389,770.

Estimated Number of Responses: 389,770.

Estimated Total Annual Burden Hours: 69,135.

Estimated Total Annual Respondent Cost: $3,015,890.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $2,769,361.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–27123 Filed 12–8–23; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0032; OMB No. 1660–NW170]

Agency Information Collection Activities: Proposed Collection, Comment Request; Generic Clearance for FEMA's Standardized Grants Performance Reporting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a new information collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's grants performance reporting.

DATES: Comments must be submitted on or before February 9, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2023–0032. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used to submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cassandra Henry, Ph.D., CGMS, Monitoring and Compliance Branch, Risk Management Division, Grant Programs Directorate, FEMA, at 202–257–2308 or *Cassandra.Henry@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Code of Federal Regulations (see 2 CFR 200.301 and 200.329), Federal awarding agencies must measure each recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster adoption of promising practices. The Foundations for Evidence-Based Policy-Making Act of 2018 (Pub. L. 115–435) (''Evidence Act'') established processes for the Federal Government to modernize and increase impacts of reporting activities. To achieve these aims, the Federal Emergency Management Agency (FEMA) is changing its programmatic reporting to facilitate better and more consistent data collection. FEMA's Grant Programs Directorate (GPD) Risk Management Division (RMD) developed standard performance reporting

instruments under this new generic collection for use across FEMA's grant programs. These instruments will replace the current quarterly performance reporting that does not have a standard format.

Grant performance reporting is a Federal requirement; standardized instruments under this generic collection will serve as the minimum performance reporting requirement for all programs. FEMA grants will collect both performance and project effectiveness measures via the required instruments under this new generic collection. Each FEMA grant program will collect only relevant, useful data. FEMA will utilize a standard framework under this generic collection but will not require each program to create the same end-product. Programs will tailor grant performance reporting instruments based on the grant's specific objectives, activities, indicators, targets, and reporting measures most appropriate for each program's funding objectives. Instruments under this generic collection are not intended to replace all existing information collection instruments that are programmatic or statutorily specific (*i.e.,* existing grant specific reporting).

Collection of Information

Title: Generic Clearance for FEMA's Standardized Grants Performance Reporting.

Type of Information Collection: New information collection.

OMB Number: 1660–NW170.

FEMA Forms: Not Applicable.

Abstract: Performance reporting is required for recipients of Federal Emergency Management Agency (FEMA) grants. However, the scope and detail of previous performance reporting varied across different FEMA grant programs. FEMA is changing its programmatic reporting to facilitate better data collection. The instruments under this generic collection will satisfy the minimum performance reporting requirement for all programs while introducing a common performance reporting framework. Individual grant programs will use this framework as a starting point and then develop tailored program-specific instruments based on the program's objectives, activities, indicators, and targets. Each FEMA grant program will collect only relevant, useful data. Performance data is used by FEMA to track recipient progress, monitor project execution, evaluate program outcomes, and respond to requests from Congress.

Affected Public: State, Local, and Tribal Governments; Private Sector.

Estimated Number of Respondents: 6,200.

Estimated Number of Responses: 24,800.

Estimated Total Annual Burden Hours: 744,000.

Estimated Total Annual Respondent Cost: $41,753,280.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $10,104,456.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–27122 Filed 12–8–23; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0031; OMB No. 1660–NW157]

Agency Information Collection Activities: Proposed Collection, Comment Request; Generic Clearance for Hazard Mitigation Assistance Programs

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of new collection and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a new information collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning a new generic information collection allowing FEMA to individually update instruments needed to provide financial, non-financial, program management, and technical assistance for FEMA's major disaster, emergency response, emergency recovery, and hazard mitigation activities.

DATES: Comments must be submitted on or before February 9, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *http://www.regulations.gov* under Docket ID FEMA–2023–0031. Follow the instructions for submitting comments.

All submissions received must include the Agency name and Docket ID. Regardless of the method used to submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennie Orenstein, Branch Chief, FEMA's Federal Insurance and Mitigation Administration's Policy, Tools and Training Branch, at *jennie.gallardy@fema.dhs.gov* or (202) 212–4071. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended), 42 U.S.C. 5121–5207 (Stafford Act) provides broad authority to FEMA for disaster and emergency relief operations, reducing risk to people and property from hazards, and related activities and operations. The Stafford Act authorizes FEMA to provide financial and technical assistance to assist state, local, territorial, and Tribal (SLTT) governments and certain private non-profit (PNP) entities with the response to and recovery from Presidentially declared major disasters and emergencies, and the

implementation of hazard mitigation measures and related activities that reduce or eliminate long-term risk to people and property from hazards and their effects.

The National Flood Insurance Act of 1968 (''NFIA''), as amended, and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001, et. seq.) authorize FEMA's National Flood Insurance Program (NFIP), including a wide range of related activities. For instance, the NFIA authorizes FEMA to provide financial assistance for planning and carrying out projects and activities designed to reduce the risk of flood damage to NFIP-insured structures.

FEMA routinely receives additional guidance from Congress, through new legislation, and the President, through Executive Orders, that requires changes to previously approved collection instruments in a few months to provide timely assistance to survivors. FEMA is proposing moving instruments from currently approved information collections into this new generic information collection to provide the necessary flexibility to update individual existing instruments and create new instruments as new guidance from Congress and the President is received, deliver timely assistance to survivors (both before and after a disaster), and maintain compliance with the Paperwork Reduction Act.

Collection of Information

Title: Generic Clearance for Hazard Mitigation Assistance Programs.

Type of Information Collection: New information collection.

OMB Number: 1660–NW157.

FEMA Forms: Not Applicable.

Abstract: The Stafford Act authorizes FEMA to provide financial, non-financial, program management and technical assistance to state, local, territorial, and Tribal (SLTT) governments and certain private non-profit (PNP) entities with the response to and recovery from Presidentially declared major disasters and emergencies, and the implementation of hazard mitigation measures and related activities that reduce or eliminate long-term risk to people and property from hazards and their effects. The information collected is required for FEMA's Hazard Mitigation Assistance (HMA) programs, the Revolving Loan Fund capitalization program, and the Public Assistance (PA) Program, for ongoing program implementation and optimization.

Affected Public: State, Local, or Tribal Governments; Private, Non-Profits.

Estimated Number of Respondents: 671,356.

Estimated Number of Responses: 671,356.

Estimated Total Annual Burden Hours: 633,775.

Estimated Total Annual Respondent Cost: $39,908,812.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $20,801,492.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–27121 Filed 12–8–23; 8:45 am]

BILLING CODE 9111–BW–P

DEPARTMENT OF HOMELAND SECURITY

Notice Regarding the Uyghur Forced Labor Prevention Act Entity List

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: The U.S. Department of Homeland Security (DHS), as the Chair of the Forced Labor Enforcement Task Force (FLETF), announces the publication and availability of the updated Uyghur Forced Labor Prevention Act (UFLPA) Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to the UFLPA, on the DHS UFLPA website. The updated UFLPA Entity List is also published as an appendix to this notice. This update adds three entities to one of the lists of the UFLPA, which identifies entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region. Details related to the process for revising the UFLPA Entity List are included in this **Federal Register** notice.

DATES: This notice announces the publication and availability of the UFLPA Entity List updated as of December 11, 2023, included as an appendix to this notice.

ADDRESSES: Persons seeking additional information on the UFLPA Entity List should email the FLETF at *FLETF.UFLPA.EntityList@hq.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Cynthia Echeverria, Director of Trade Policy, Trade and Economic Security, Office of Strategy, Policy, and Plans, DHS. Phone: (202) 891–2331, Email: *FLETF.UFLPA.EntityList@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Homeland Security (DHS), on behalf of the Forced Labor Enforcement Task Force (FLETF), is announcing the publication of the updated UFLPA Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to Section 2(d)(2)(B) of the Uyghur Forced Labor Prevention Act (Pub. L. 117–78) (UFLPA), to *https://www.dhs.gov/uflpa-entity-list.* The UFLPA Entity List is available as an appendix to this notice. This update adds three entities to the Section 2(d)(2)(B)(ii) list of the UFLPA, which identifies entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region. Future revisions to the UFLPA Entity List, which may include additions, removals or technical corrections, will be published to *https://www.dhs.gov/uflpa-entitylist* and in the appendices of future **Federal Register** notices. *See* Appendix 1.

Beginning on June 21, 2022, the UFLPA requires the Commissioner of U.S. Customs and Border Protection to apply a rebuttable presumption that goods mined, produced, or manufactured by entities on the UFLPA Entity List are made with forced labor, and therefore, prohibited from importation into the United States

under 19 U.S.C. 1307. *See* Section 3(a) of the UFLPA. As the FLETF revises the UFLPA Entity List, including by making additions, removals, or technical corrections, DHS, on its behalf, will post such revisions to the DHS UFLPA website (*https://www.dhs.gov/uflpa-entity-list*) and also publish the revised UFLPA Entity List as an appendix to a **Federal Register** notice.

Background

A. The Forced Labor Enforcement Task Force

Section 741 of the United States-Mexico-Canada Agreement Implementation Act established the FLETF to monitor United States enforcement of the prohibition under section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307). *See* 19 U.S.C. 4681. Pursuant to DHS Delegation Order No. 23034, the DHS Under Secretary for Strategy, Policy, and Plans serves as Chair of the FLETF, an interagency task force that includes the Department of Homeland Security, the Office of the U.S. Trade Representative, and the Departments of Labor, State, Justice, the Treasury, and Commerce (member agencies).[1] *See* 19 U.S.C. 4681; Executive Order 13923 (May 15, 2020). In addition, the FLETF includes six observer agencies: the Departments of Energy and Agriculture, the U.S. Agency for International Development, the National Security Council, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement Homeland Security Investigations.

B. The Uyghur Forced Labor Prevention Act: Preventing Goods Made With Forced Labor in the People's Republic of China From Being Imported Into the United States

The UFLPA requires, among other things, that the FLETF, in consultation with the Secretary of Commerce and the Director of National Intelligence, develop a strategy (UFLPA Section 2(c)) for supporting enforcement of section 307 of the Tariff Act of 1930, to prevent the importation into the United States of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China. As required by the UFLPA, the *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China,* which was published on the DHS website on June 17, 2022 (*see https://www.dhs.gov/uflpa-strategy*), includes the initial UFLPA Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to the UFLPA. *See* UFLPA Section 2(d)(2)(B).

C. UFLPA Entity List

The UFLPA Entity List addresses distinct requirements set forth in clauses (i), (ii), (iv), and (v) of Section 2(d)(2)(B) of the UFLPA that the FLETF identify and publish the following four lists:

(1) a list of entities in the Xinjiang Uyghur Autonomous Region that mine, produce, or manufacture wholly or in part any goods, wares, articles, and merchandise with forced labor;

(2) a list of entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region;

(3) a list of entities that exported products made by entities in lists 1 and 2 from the People's Republic of China into the United States; and

(4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of the Xinjiang Uyghur Autonomous Region or the Xinjiang Production and Construction Corps for purposes of the ''poverty alleviation'' program or the ''pairing-assistance'' program or any other government-labor scheme that uses forced labor.

The UFLPA Entity List is a consolidated register of the above four lists. In accordance with Section 3(e) of the UFLPA, effective June 21, 2022, entities on the UFLPA Entity List (listed entities) are subject to the UFLPA's rebuttable presumption, and products they produce, wholly or in part, are prohibited from entry into the United States under 19 U.S.C. 1307. The UFLPA Entity List is described in Appendix 1 to this notice. The UFLPA Entity List should not be interpreted as an exhaustive list of entities engaged in the practices described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA.

Revisions to the UFLPA Entity List, including all additions, removals, and technical corrections, will be published on the DHS UFLPA website (*https://www.dhs.gov/uflpa-entity-list*) and as an Appendix to a notice that will be published in the **Federal Register**. *See* Appendix 1. The FLETF will consider future additions to, or removals from, the UFLPA Entity List based on criteria described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation(s) to add, remove or make technical corrections to an entry on the UFLPA Entity List. FLETF member agencies will review and vote on revisions to the UFLPA Entity List accordingly.

Additions to the Entity List

The FLETF will consider future additions to the UFLPA Entity List based on the criteria described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation to the FLETF Chair to add an entity to the UFLPA Entity List. Following review of the recommendation by the FLETF member agencies, the decision to add an entity to the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

Requests for Removal From the Entity List

Any listed entity may submit a request for removal (removal request) from the UFLPA Entity List along with supporting information to the FLETF Chair at *FLETF.UFLPA.EntityList@hq.dhs.gov.* In the removal request, the entity (or its designated representative) should provide information that demonstrates that the entity no longer meets or does not meet the criteria described in the applicable clause ((i), (ii), (iv), or (v)) of Section 2(d)(B) of the UFLPA. The FLETF Chair will refer all such removal requests and supporting information to FLETF member agencies. Upon receipt of the removal request, the FLETF Chair or the Chair's designated representative may contact the entity on behalf of the FLETF regarding questions on the removal request and may request additional information. Following review of the removal request by the FLETF member agencies, the decision to remove an entity from the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

Listed entities may request a meeting with the FLETF after submitting a removal request in writing to the FLETF Chair at *FLETF.UFLPA.EntityList@hq.dhs.gov.* Following its review of a removal request, the FLETF may accept the meeting request at the conclusion of the review period and, if accepted, will hold the meeting prior to voting on the entity's removal request. The FLETF Chair will advise the entity in writing of the FLETF's decision on its removal

[1] The U.S. Department of Homeland Security, as the FLETF Chair, has the authority to invite representatives from other executive departments and agencies, as appropriate. *See* Executive Order 13923 (May 15, 2020). The U.S. Department of Commerce is a member of the FLETF as invited by the Chair.

request. While the FLETF's decision on a removal request is not appealable, the FLETF will consider new removal requests if accompanied by new information.

Robert Silvers,

Under Secretary, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security.

Appendix 1

This notice supersedes the UFLPA Entity List published in the **Federal Register** on September 27, 2023 (88 FR 66496). The UFLPA Entity List as of December 11, 2023 is available in this appendix and is published on *https://www.dhs.gov/uflpa-entity-list.* This update adds three entities to the Section 2(d)(2)(B)(ii) list of the UFLPA, which identifies entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region:

- Anhui Xinya New Materials Co., Ltd. (formerly known as Chaohu Youngor Color Spinning Technology Co., Ltd. and Chaohu Xinya Color Spinning Technology Co., Ltd.)
- COFCO Sugar Holdings Co., Ltd.
- Sichuan Jingweida Technology Group Co., Ltd. (also known as Sichuan Mianyang Jingweida Technology Co., Ltd. and JWD Technology; and formerly known as Mianyang High-tech Zone Jingweida Technology Co., Ltd.)

No technical corrections or removals are being made to the UFLPA Entity List at this time.

The UFPLA Entity List is a consolidated register of the four lists that are required to be developed and maintained pursuant to Section 2(d)(2)(B) of the UFLPA. Thirty entities that meet the criteria set forth in the four required lists (*see* Sections 2(d)(2)(B)(i), (ii), (iv), and (v) of the UFLPA) are specified on the UFLPA Entity List.

UFLPA Entity List December 11, 2023

UFLPA Section 2(d)(2)(B)(i) A List of Entities in the Xinjiang Uyghur Autonomous Region That Mine, Produce, or Manufacture Wholly or in Part Any Goods, Wares, Articles, and Merchandise With Forced Labor

Baoding LYSZD Trade and Business Co., Ltd.
Changji Esquel Textile Co. Ltd. (and one alias: Changji Yida Textile)
Hetian Haolin Hair Accessories Co. Ltd. (and two aliases: Hotan Haolin Hair Accessories; and Hollin Hair Accessories)
Hetian Taida Apparel Co., Ltd (and one alias: Hetian TEDA Garment)
Hoshine Silicon Industry (Shanshan) Co., Ltd (including one alias: Hesheng Silicon Industry (Shanshan) Co.) and subsidiaries
Xinjiang Daqo New Energy, Co. Ltd (including three aliases: Xinjiang Great New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)
Xinjiang East Hope Nonferrous Metals Co. Ltd. (including one alias: Xinjiang Nonferrous)
Xinjiang GCL New Energy Material Technology, Co. Ltd (including one alias: Xinjiang GCL New Energy Materials Technology Co.)
Xinjiang Junggar Cotton and Linen Co., Ltd.
Xinjiang Production and Construction Corps (including three aliases: XPCC; Xinjiang Corps; and Bingtuan) and its subordinate and affiliated entities

UFLPA Section 2(d)(2)(B)(ii) A List of Entities Working With the Government of the Xinjiang Uyghur Autonomous Region To Recruit, Transport, Transfer, Harbor or Receive Forced Labor or Uyghurs, Kazakhs, Kyrgyz, or Members of Other Persecuted Groups Out of the Xinjiang Uyghur Autonomous Region

Aksu Huafu Textiles Co.—(including two aliases: Akesu Huafu and Aksu Huafu Dyed Melange Yarn)
Anhui Xinya New Materials Co., Ltd. (formerly known as Chaohu Youngor Color Spinning Technology Co., Ltd.; and Chaohu Xinya Color Spinning Technology Co., Ltd.)
Camel Group Co., Ltd.
COFCO Sugar Holdings Co., Ltd.
Hefei Bitland Information Technology Co., Ltd. (including three aliases: Anhui Hefei Baolongda Information Technology; Hefei Baolongda Information Technology Co., Ltd.; and Hefei Bitland Optoelectronic Technology Co., Ltd.)
Hefei Meiling Co. Ltd. (including one alias: Hefei Meiling Group Holdings Limited).
KTK Group (including three aliases: Jiangsu Jinchuang Group; Jiangsu Jinchuang Holding Group; and KTK Holding).
Lop County Hair Product Industrial Park
Lop County Meixin Hair Products Co., Ltd.
Nanjing Synergy Textiles Co., Ltd. (including two aliases: Nanjing Xinyi Cotton Textile Printing and Dyeing; and Nanjing Xinyi Cotton Textile).
Ninestar Corporation and its eight Zhuhai-based subsidiaries, which include Zhuhai Ninestar Information Technology Co. Ltd., Zhuhai Pantum Electronics Co. Ltd., Zhuhai Apex Microelectronics Co., Ltd., Geehy Semiconductor Co., Ltd., Zhuhai Pu-Tech Industrial Co., Ltd., Zhuhai G&G Digital Technology Co., Ltd., Zhuhai Seine Printing Technology Co., Ltd., and Zhuhai Ninestar Management Co., Ltd.
No. 4 Vocation Skills Education Training Center (VSETC)
Sichuan Jingweida Technology Group Co., Ltd. (also known as Sichuan Mianyang Jingweida Technology Co., Ltd. and JWD Technology; and formerly known as Mianyang High-tech Zone Jingweida Technology Co., Ltd.)
Tanyuan Technology Co. Ltd. (including five aliases: Carbon Yuan Technology; Changzhou Carbon Yuan Technology Development; Carbon Element Technology; Jiangsu Carbon Element Technology; and Tanyuan Technology Development).
Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities
Xinjiang Tianmian Foundation Textile Co., Ltd.
Xinjiang Tianshan Wool Textile Co. Ltd.
Xinjiang Zhongtai Chemical Co. Ltd.
Xinjiang Zhongtai Group Co. Ltd

UFLPA Section 2(d)(2)(B)(iv) A List of Entities That Exported Products Described in Clause (iii) From the People's Republic of China into the United States

Entities identified in sections (i) and (ii) above may serve as both manufacturers and exporters. The FLETF has not identified additional exporters at this time but will continue to investigate and gather information about additional entities that meet the specified criteria.

UFLPA Section 2(d)(2)(B)(v) A List of Facilities and Eentities, Including the Xinjiang Production and Construction Corps, That Source Material From the Xinjiang Uyghur Autonomous Region or From Persons Working With the Government of the Xinjiang Uyghur Autonomous Region or the Xinjiang Production and Construction Corps for Purposes of the ''Poverty Alleviation'' Program or the ''Pairing-Assistance'' Program or Any Other Government Labor Scheme That Uses Forced Labor

Baoding LYSZD Trade and Business Co., Ltd.
Chenguang Biotech Group Co., Ltd. and its subsidiary Chenguang Biotechnology Group Yanqi Co. Ltd.
Hefei Bitland Information Technology Co. Ltd.
Hetian Haolin Hair Accessories Co. Ltd.
Hetian Taida Apparel Co., Ltd.
Hoshine Silicon Industry (Shanshan) Co., Ltd., and Subsidiaries
Xinjiang Junggar Cotton and Linen Co., Ltd.
Lop County Hair Product Industrial Park
Lop County Meixin Hair Products Co., Ltd.
No. 4 Vocation Skills Education Training Center (VSETC)
Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities
Yili Zhuowan Garment Manufacturing Co., Ltd.

[FR Doc. 2023–26984 Filed 12–8–23; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 7070–N–94]

30-Day Notice of Proposed Information Collection: HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value; OMB Control No.: 2502–0494

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice

is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 10, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 5, 2023, at 88 FR 60705.

A. Overview of Information Collection

Title of Information Collection: HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value.

OMB Control Number, if applicable: 2502–0494.

Type of Request: Extension of currently approved collection.

Form Number: HUD 92800.5B.

Description of the need for the information and proposed use: Lenders must provide loan applicants a completed copy of Form HUD–92800.5B at or before loan closing. Form HUD–92800.5B serves as the mortgagee's conditional commitment/direct endorsement statement of appraised value of Federal Housing Administration (FHA) mortgage insurance on the property. The form provides a section for the statement of the property's appraised value and other required FHA disclosures to the borrower, including specific conditions that must be met before HUD can endorse a mortgage for FHA insurance. HUD uses the information to determine the eligibility of a property for mortgage insurance.

Respondents: Mortgagees.

Estimated Number of Respondents: 1,407.

Estimated Number of Responses: 562,800.

Frequency of Response: 400.

Average Hours per Response: 0.12.

Total Estimated Burdens: 67,536.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) 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.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

D. Summary of Form 92800.5B Comments and HUD Responses

Comment: A commenter shared their understanding that FHA requires lenders to utilize the 92800.5B to comply with the Consumer Financial Protection Bureau's (CFPB) requirement for lenders to provide borrows a copy of the appraisal report promptly upon completion or at least three days prior to the closing of the loan. The commenter recommends that FHA remove its requirement for lenders to utilize the HUD Form 92800.5B, Conditional Commitment/Direct Endorsement Statement of Appraised Value. The commenter felt the 92800.5B is obsolete and duplicative due to borrower's receiving a copy of the appraisal report with the HUD Form 92900–LT, FHA Loan Underwriting and Transmittal Summary.

HUD Response: HUD appreciates this comment. Although the HUD Form 92800.5B and the 92900–LT state the Appraised Value, neither form is tied to CFPB's requirements for providing the Borrower a copy of the appraisal report or the Borrower's receipt of the appraisal report. Form 92800.5B provides other required FHA disclosures to the borrower, including specific conditions that must be met before HUD can endorse a mortgage for FHA insurance. Consideration may be given to necessary updates at a future date.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–27061 Filed 12–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–90]

30-Day Notice of Proposed Information Collection: Mortgagor's Certificate of Actual Cost OMB Control No.: 2502–0112

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 10, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 7, 2022 at 87 FR 61095.

A. Overview of Information Collection

Title of Information Collection: Mortgagor's Certificate of Actual Cost.

OMB Approval Number: 2502–0112.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–92330.

Description of the need for the information and proposed use: HUD uses form HUD–92330 to obtain data from a mortgagor relative to actual cost of a project. The mortgagor is required to certify to HUD the project's actual cost by submitting the form. HUD uses the cost information to determine the maximum insurable mortgage for final endorsement of an insured mortgage. Actual cost is defined in section 227c of National Housing Act. In addition, form HUD–92330 must be accompanied by an audited balance sheet certified by an accountant unless the project has less than 40 units, or if it is a refinancing or a purchase of an existing project under sections 207/223f or 232/223f of the National Housing Act.

Estimated Number of Respondents: 1,168.

Estimated Number of Responses: 1,168.

Frequency of Response: 1.

Average Hours per Response: 8.

Total Estimated Burden: 9,344.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–27048 Filed 12–8–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–92]

30-Day Notice of Proposed Information Collection: Consolidated Public Housing Certification of Completion; OMB Control No.: 2577–0021

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 10, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 10, 2023, at 88 FR 30152.

A. Overview of Information Collection

Title of Information Collection: Consolidated Public Housing Certification of Completion.

OMB Approval Number: 2577–0021.

Type of Request: Reinstatement, without change, of previously approved collection for which approval has expired.

Form Number: None.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) certify to HUD that contract requirements and standards have been satisfied in a project development and HUD may authorize payment of funds due the contractor/developer. The Certification is submitted by a PHA to indicate to HUD that contract requirements have been satisfied for a specific project.

Respondents: Public Housing Agencies.

Estimated Number of Respondents: 58.

Estimated Number of Responses: 58.

Frequency of Response: 1 per project.

Average Hours per Response: 1 hr.

Total Estimated Burdens: 58 hrs.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Certification	58	1	58	1.0	58	$40	$2,320
Total	58	1	58	1.0	58	40	2,320

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) 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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–27060 Filed 12–8–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7071–N–14]

60-Day Notice of Proposed Information Collection: Electronic Closing and Continued First Lien Priority Certificates for FHA-Insured Commercial Mortgage Transactions; OMB Control No.: 2502–0618

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 9, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* ; telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Electronic Closing and Continued First Lien Priority Certificates for FHA-Insured Commercial Mortgage Transactions.

OMB Approval Number: 2502–0618.

OMB Expiration Date: 03/31/2024.

Type of Request: Revision of currently approved collection.

Form Numbers: HUD–5985L, HUD–5985B, and HUD–5985IRR.

Description of the need for the information and proposed use:

HUD is adding to the collection two (2) documents (HUD–5985L and HUD–5985B) that will be used to facilitate uniform electronic closings of FHA-insured commercial mortgage closings, allow for the use of digital signatures and digital records where they are consistent with program obligations, and determine the parties' compliance with applicable legal requirements and therefore ensure protection of the FHA insurance fund; and one (1) document (HUD–5985IRR) that will be used by the FHA Lender to certify to HUD certain conditions required as part of a request to reduce the interest rate of an existing FHA-insured commercial mortgage (often due to market fluctuations that lower the interest rate and save the project money by making this reduction). In addition, the name of this collection is being changed from COVID19 HUD Contingency Plan for HUD Multifamily Rental Project Closing Documents to Electronic Closing and Continued First Lien Priority Certificates for FHA-Insured Commercial Mortgage Transactions.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 3,094.

Estimated Number of Responses: 3,217.

Frequency of Response: 1.033 per annum.

Average Hours per Response: 0.833 hour.

Total Estimated Burden: 2,900.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2023–27046 Filed 12–8–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–91]

30-Day Notice of Proposed Information Collection: Floodplain Management and Protection of Wetlands, OMB Control No.: 2506–0151

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: January 10, 2024.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 15, 2023 at 88 FR 63596.

A. Overview of Information Collection

Title of Information Collection: 24 CFR 55, Floodplain Management and Protection of Wetlands.

OMB Approval Number: 2506–0151.

Type of Request: Extension of currently approved collection:

Description of the need for the information and proposed use: 24 CFR 55 implements decision-making procedures prescribed by Executive Order 11988 with which applicants must comply before HUD financial assistance can be approved for projects that are located within floodplains. Records of compliance must be kept.

Respondents: 575.

Information Collection/Form Number: N/A.

Estimated Number of Respondents: 575.

Frequency of Response: 1.

Responses per Annum: 575.

Average Burden Hours per Response: Varies.

Total Estimated Burdens: 2,500 hours.

Information collection/form number	Estimated number of respondents	Frequency of response	Responses per annum	Average burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
ICR#: 2506–0151 24 CFR 55.20	275	1	275	8	2,200	44.00	96,800

Information collection/form number	Estimated number of respondents	Frequency of response	Responses per annum	Average burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
ICR#: 2506–0151 24 CFR 55.21	300	1	300	1	300	44.00	13,200
Total	575	1	575		2,500		110,000

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) 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.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–27051 Filed 12–8–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2023–N093; FXMB12310900WH0–245–FF09M26000; OMB Control Number 1018–0023]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Migratory Bird Surveys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection, with changes.

DATES: Interested persons are invited to submit comments on or before January 10, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice at *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. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018-0023'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On June 2, 2023, we published in the **Federal Register** (88 FR 36328) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on August 1, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–HQ–MB–2023–0085) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received four comments in response to that notice which did not address the information collection requirements. No responses are required to those comments.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request

to OMB to approve this information collection request. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703–711) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for (1) the wise management of migratory bird populations frequenting the United States, and (2) the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird harvest. Based on information from harvest surveys, we can adjust hunting regulations as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Under 50 CFR 20.20, migratory bird hunters must register for the Migratory Bird Harvest Information Program (HIP) in each State in which they hunt each year. State natural resource agencies must send names and addresses of all migratory bird hunters to the Service's Branch of Monitoring and Information Management, Division of Migratory Bird Management, on an annual basis.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program. We randomly select migratory bird hunters and ask them to report their harvests. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest for the species surveyed.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Migratory Bird Hunter Survey the previous year, as well as a sample of hunters who were not surveyed the previous year, are asked to complete and return a letter if they are willing to participate in the Parts Collection Survey. We provide postage-paid envelopes to respondents before the hunting season and ask them to send in a wing or the tail feathers from each duck or goose that they harvest, or a wing from each mourning dove, woodcock, band-tailed pigeon, or rail that they harvest. We use the wings and tail feathers to identify the species, sex, and age of the harvested sample. We also ask respondents to report the date and location of harvest for each bird on the outside of the envelope. We combine the results of this survey with the harvest estimates obtained from the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable us to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help us determine appropriate hunting regulations.

The Sandhill Crane Harvest Survey is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and ask them to report the date, location, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of permits issued, enables us to estimate the total harvest of sandhill cranes. Based on information from this survey, we adjust hunting regulations as needed.

In 2019, we implemented a new, online platform for the Migratory Bird Hunter Survey. The platform is optimized for use on multiple devices (computer, tablet, or phone; Android or Apple OS). This online survey platform walks a participant through the process of entering their harvest for a single day and asks for one piece of information at a time, which reduces confusion and the likelihood that the hunter will provide incorrect information. The online system improves data quality and prevents errors (*e.g.,* reporting harvest of the wrong species, or in the wrong State). We conducted the full paper survey through 2022, in order to ensure that data collected through the online platform was sound, and to provide a side-by-side comparison of harvest estimates that could be used to calibrate the old survey to the new one. This was particularly important for maintaining a continuous time series of harvest estimates, despite changing methodology. In the spring of 2024, we will conduct the full survey using the online application, but will provide a paper survey by mail to those hunters who request them.

Proposed Revisions

Pilot Digital Photo Survey—We propose to revise our Parts Collection Survey over the next 3 years (2023–2026) to replace or substantially augment bird wings and tails collection with photos of harvested birds, in order to reduce survey costs and perceived risk of disease transmission through the handling of wild bird parts. Preliminary assessments have indicated that photos taken by hunters of harvested waterfowl can be used to determine species, age, and sex of birds, without requiring examination of bird parts ''in the hand.''

We propose to conduct a 3-year pilot study with the development of a mobile application that can be used by hunters to take photos of the birds they harvest and upload them to our database, and a web-based interface for expert biologists to use to examine and identify birds from photos. We propose to conduct the pilot study with up to 600 hunters each year, which allows us to (1) evaluate the potential of using photo identification for other species in the Parts Collection survey, including doves, band-tailed pigeons, woodcock and rails, (2) achieve sample sizes sufficient to assess the limitations of photo identification for all waterfowl species, (3) develop methods to enhance the quality of hunter-supplied photos, and (4) amass an annotated set of photos to provide to researchers investigating the potential of machine-learning based image classification methods for automated identification of species, age, and sex.

In addition, there is the potential for introducing other biases in data collection when transitioning to a photo survey; to assess these biases and provide uninterrupted information on annual harvest, we intend to conduct the full parts survey during this 3-year period to provide a comparison of results between the two surveys. If photo identification proves difficult for some species, we may continue a limited sample of parts collection to ensure harvest estimates can be calculated.

Title of Collection: Migratory Bird Information Program and Migratory Bird Surveys, 50 CFR 20.20.

OMB Control Number: 1018–0023.

Form Number: Forms 3–165, 3–165A through E, and 3–2056J through N.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: States and migratory game bird hunters.

Respondent's Obligation: Mandatory for HIP registration information; voluntary for participation in the surveys.

Frequency of Collection: Annually for States or on occasion for migratory bird hunters.

Total Estimated Annual Nonhour Burden Cost: None.

Collection type/form number	Number of respondents	Average number of responses each	Number of annual responses *	Average time per response	Total Annual burden hours *
Migratory Bird Harvest Information Program (State Governments)					
	49	18	*882*	129 hours	*113,778*
Migratory Bird Hunter Survey (Individuals)					
Form 3–2056J	31,900	1	31,900	4 minutes	2,127
Form 3–2056K	16,900	1	16,900	3 minutes	845
Form 3–2056L	8,500	1	8,500	3 minutes	425
Form 3–2056M	10,200	1	10,200	2 minutes	340
Subtotals	*67,500*	.....	*67,500*	.....	*3,737*
Parts Collection Survey—Online (Individuals)					
Form 3–165	4,700	22	103,400	5 minutes	8,617
Form 3–165A	770	5.5	4,235	5 minutes	353
Form 3–165B	3,540	1	3,540	1 minute	59
Form 3–165C	260	1	260	1 minute	4
Form 3–165D	770	1	770	1 minute	13
Form 3–165E	750	1.5	1,125	5 minutes	94
Subtotals	*10,790*	.....	*113,330*	.....	*9,140*
Sandhill Crane Harvest Survey (Individuals)					
Form 3–2056N	*5,900*	1	*5,900*	1.5 minutes	*148*
Pilot Digital Photo Survey (Individuals)					
Form 3–165	200	22	4,400	2 minutes	147
Form 3–165A	60	5.5	330	2 minutes	11
Form 3–165B	150	1	150	1 minute	3
Form 3–165C	60	1	60	1 minute	1
Form 3–165D	60	1	60	1 minute	1
Form 3–165E	30	1.5	45	2 minutes	2
Subtotals	*560*	.....	*5,045*	.....	*165*
Totals	84,799	.....	192,657	.....	126,968

* Rounded

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–27119 Filed 12–8–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ320000.L13300000.EN0000; OMB Control No. 1004–0201]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Oil Shale Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 10, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Sabry Hanna by email at *shanna@blm.gov,* or by telephone at (571) 458–6644. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or

TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 12, 2023 (88 FR 62592).

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This control number applies to the exploration, development, and utilization of oil shale resources on the BLM-managed public lands. Currently, the only oil shale leases issued by the BLM are research, development, and demonstration (RD&D) leases. However, the BLM regulations provide a framework for commercial oil shale leasing and additionally include provisions for conversion of RD&D leases to commercial leases. Section 369 of the Energy Policy Act (42 U.S.C. 15927) addresses oil shale development and authorizes the Secretary of the Interior to establish regulations for a commercial leasing program for oil shale. The Mineral Leasing Act of 1920 (30 U.S.C. 241(a)) provides the authority for the BLM to allow for the exploration, development, and utilization of oil shale resources on the BLM-managed public lands. Additional statutory authorities for the oil shale program are: (1) The Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359); and (2) The Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.,* including 43 U.S.C. 1732). OMB Control Number 1004–0201 is currently scheduled to expire on June 30, 2024. The BLM request that OMB renew this OMB control number for an additional three (3) years.

Title of Collection: Oil Shale Management (43 CFR parts 3900, 3910, 3920, and 3930).

OMB Control Number: 1004–0201.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Applicants for oil shale leases, oil shale lessees and oil shale operators.

Total Estimated Number of Annual Respondents: 2.

Total Estimated Number of Annual Responses: 24.

Estimated Completion Time per Response: Varies from the number of minutes/hours per response.

Total Estimated Number of Annual Burden Hours: 1,795.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $526,737.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2023–27132 Filed 12–8–23; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500176837; AA–6703–C, AA–6703–E, AA–6703–B2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to The Tatitlek Corporation for the Native village of Tatitlek, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA). The subsurface estate in the same lands will be conveyed to Chugach Alaska Corporation when the surface estate is conveyed to The Tatitlek Corporation.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Dina Torres, BLM Alaska State Office, 907–271–5699, or *dtorres@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to The Tatitlek Corporation. The decision approves conveyance of the surface estate in

certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*). As provided by ANCSA, the subsurface estate in the same lands will be conveyed to Chugach Alaska Corporation when the surface estate is conveyed to The Tatitlek Corporation. The lands are located north and east of Tatitlek, Alaska, and are described as:

Copper River Meridian, Alaska

T. 9 S., R. 3 E.,
Secs. 5, 6, 9, 16, 21, and 28.
Containing 3,289.54 acres.
T. 10 S., R. 3 E.,
Secs. 26 and 35
Containing 1,280 acres.
T. 11 S., R. 4 E.,
Secs. 20, 28, 29, and 33.
Containing 2,560 acres.
T. 9 S., R. 1 W.,
Secs. 20 and 27.
Containing 991.81 acres.
T. 9 S., R. 2 W.,
Sec. 11.
Containing 640 acres.
Aggregating 8,761.35 acres.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above.

The BLM will also publish notice of the decision once a week for four consecutive weeks in the ''Cordova Times'' newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until January 10, 2024 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Dina L. Torres,

Management and Program Analyst, Division of Lands and Cadastral.

[FR Doc. 2023–27074 Filed 12–8–23; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–37043; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before November 25, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by December 26, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before November 25, 2023. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

ARIZONA

Pima County

University of Arizona Campus Agricultural Center, 4101 N Campbell Avenue, Tucson, SG100009695
Barrio San Antonio, Manlove Street, Arroyo Chico, Park Avenue, Aviation Highway, and Santa Rita Ave., Tucson, SG100009712

ILLINOIS

Cook County

Gillson Park and Wilmette Harbor Historic District, Michigan Avenue and Sheridan Road, Wilmette, SG100009684
The Richard E. and Charlotte Henrich House, 24 Brinker Road, Barrington Hills, SG100009685

KANSAS

Allen County

Iola Theatre (Theaters and Opera Houses of Kansas MPS), 202 South Washington Avenue, Iola, MP100009703

Douglas County

First Methodist Church of Eudora, 703 Church Street, Eudora, SG100009704

Elk County

Elk Falls High School Gymnasium (New Deal-Era Resources of Kansas MPS), 1014 Montgomery, Elk Falls, MP100009705

Johnson County

Morrow, George L., Barn (Agriculture-Related Resources of Kansas MPS), 19810 South Hedge Lane, Spring Hill, MP100009711

Morris County

Herington Army Airfield Chapel, 106 Main Street, Latimer, SG100009706

Riley County

Alten-Peak House (Late 19th Century Vernacular Stone Houses in Manhattan, Kansas MPS), 2040 Fort Riley Boulevard, Manhattan, MP100009707

Shawnee County

Union Church Building, 760 North Washington Street, Auburn, SG100009708

MISSOURI

Barry County

Roaring River Camps and Hotel Summer Cottage, 24895 Farm Rd. 1135, Cassville vicinity, SG100009689

Caldwell County

Switzer, P.A. Residence, 211 E Samuel St., Hamilton, SG100009692

Jackson County

Heim Fire Station No. 20, 2701 Guinotte Ave., Kansas City, SG100009693

St. Louis County

#1 Fairway, 11869 Fairlind Dr., Sunset Hills, SG100009688

St. Louis Independent City

LeGear Medicine Company Building, 4155 Beck Avenue, St. Louis, SG100009690
Savings Trust Company of St. Louis, 4915 Delmar Blvd., St. Louis, SG100009691

NORTH DAKOTA

Hettinger County

Erickson, Andrew, Barn (Common Farm and Ranch Barns in North Dakota MPS), 1104 7th St. NE, Hettinger, MP100009697

SOUTH CAROLINA

McCormick County

McCormick County Office Building, 201 East Augusta Street, McCormick, SG100009699

WASHINGTON

Yakima County

Fruit and Produce Row Historic District, Both sides of North First Ave., from West Yakima Ave. north to West D St., Yakima, SG100009696

A request for removal has been made for the following resource(s):

KANSAS

Shawnee County

Kansas State Office Building, 915 SW Harrison Street, Topeka, OT100007341

An additional documentation has been received for the following resource(s):

ARIZONA

Maricopa County

Westwood Village and Estates Historic District (Additional Documentation), (Residential Subdivisions and Architecture in Central Phoenix, 1870–1963, MPS), 2937 North 22nd Avenue, Phoenix, AD100007166

ILLINOIS

Rock Island County

Broadway Historic District (Additional Documentation), Roughly bounded by 17th and 23rd Sts., 5th and 7th Aves., Lincoln Court, and 12th and 13th Aves., Rock Island, AD98001046

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2023–27057 Filed 12–8–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–37030; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before November 18, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by December 26, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before November 18, 2023. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

Key: State, County, Property Name, Multiple Name (if applicable), Address/ Boundary, City, Vicinity, Reference Number.

CALIFORNIA

San Mateo County

Yamanouchi, Yoshiko, House, (Asian Americans and Pacific Islanders in California, 1850–1970 MPS), 1007 East 5th Avenue, San Mateo, MP100009653

DELAWARE

Kent County

Vincelette Futuro House, 4388 Deep Grass Lane, Houston, SG100009680

DISTRICT OF COLUMBIA

District of Columbia

Northeast Savings Bank, (Banks and Financial Institutions MPS), 800 H Street NE, Washington, MP100009657

FLORIDA

Miami-Dade County

Ebenezer Methodist Church, (Historic and Architectural Properties of Overtown in Miami, Florida (1896–1964) MPS), 1074 NW 3rd Avenue, Miami, MP100009673

INDIANA

Porter County

Chicago Mica Co.—Continental Diamond Fibre Co.—ANCO Factory, 350 South Campbell Street, Valparaiso, SG100009652

IOWA

Black Hawk County

Friedl Bakery Building, (Waterloo MPS), 302 Commercial Street, Waterloo, MP100009670

Dallas County

St. Boniface Catholic Church, 250 4th Street, Waukee, SG100009671

MAINE

Sagadahoc County

Snipe Farm, 157 Arrowsic Road, Arrowsic, SG100009659

Waldo County

Webster, Paul and Lucena, Summer House, 142 Lighthouse Road, Stockton Springs, SG100009660

MASSACHUSETTS

Suffolk County

Parker House, 56–62 School St. and 60–68 Tremont St., Boston, 86003804

NEW HAMPSHIRE

Grafton County

Littleton Community House & Annex, 120 Main Street, Littleton, SG100009661

NEW MEXICO

Santa Fe County

Immaculate Heart of Mary Seminary, 49 & 50 Mt. Carmel Road, Santa Fe, SG100009668

Socorro County

Biavaschi Saloon-Capitol Bar, 110 Plaza Street, Socorro, SG100009669

NEW YORK

Erie County

BUFFALO PUBLIC SCHOOL #75 (PS 75), 57 Howard Street, Buffalo, SG100009683

OKLAHOMA

Craig County

Adams, John and Hazel, House, (Bruce Goff Designed Resources in Oklahoma MPS), 108 Fairmont Road, Vinita, MP100009662

Delaware County

Delaware School, District No. 64, approx. 6 miles north of Jay on US 59/OK 10, Jay, SG100009663

Kay County

Robertson, Dr. William A.T. and Lillian, House, 202 North 6th Street, Ponca City, SG100009664

WASHINGTON

Snohomish County

Weyerhaeuser Timber Company Office Building, 615 Millwright Loop N, Everett, SG100009679

WISCONSIN

Brown County

Kohl, Edward F. and Jean, House, 815 Nicolet Avenue, De Pere, SG100009654

Calumet County

Stanelle, Gottlieb and Beata, Farmhouse, W2020 Schmidt Road, Brillion, SG100009675

A request for removal has been made for the following resource(s):

CALIFORNIA

Santa Cruz County

Lower Sky Meadow Residential Area Historic District, (Big Basin Redwoods State Park MPS), 7, 8, 9, 10, 14, 15 & 16 Sky Meadow Ln., Boulder Creek, OT14000662

Headquarters Administration Building, (National-State Cooperative Program and the CCC in California State Parks MPS), 21600 Big Basin Way, Boulder Creek, OT15000914

MASSACHUSETTS

Bristol County

Shawmut Diner, (Diners of Massachusetts MPS), 943 Shawmut Ave., New Bedford, OT03001208

Worcester County

Stearns Tavern, (Worcester MRA), 651 Park Ave., Worcester, OT80000479

An additional documentation has been received for the following resource(s):

ARIZONA

Maricopa County

Oakland Historic District (Additional Documentation), Roughly bounded by 19th Ave. Fillmore St., Grand Ave., and Van Buren St., Phoenix, AD01000164

Elizabeth Seargeant-Emery Oldaker House (Additional Documentation), (Roosevelt Neighborhood MRA), 649 N. 3rd Ave., Phoenix, AD83003472

Yavapai County

South Prescott Townsite (Additional Documentation), (Prescott Territorial Buildings MRA), 225 South Cortez Street, Prescott, AD97000859

WASHINGTON

King County

Neely, Sr., Aaron and Sarah, Farm (Additional Documentation), E of Auburn off WA 18, Auburn vicinity, AD74001955

Authority: Section 60.13 of 36 CFR part 60

Sherry Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2023–27059 Filed 12–8–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Self-Balancing Electric Skateboards and Components Thereof,* DN 3710; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint, a motion for temporary relief, and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Future Motion, Inc. on December 5, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain self-balancing electric skateboards and components thereof. The complaint names as respondents: Floatwheel of China; Changzhou Smilo Motors Co., Ltd. of China; Changzhou Gaea Technology Co., Ltd. of China; and Shanghai Loyal Industry Co., Ltd. d/b/a ''SoverSky'' of China. The complainant requests that the Commission grant temporary relief in the form of temporary exclusion orders during the period of investigation. Complainant also requests issuance of a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for

comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3710'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures) [1]. Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 5, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–27109 Filed 12–8–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1314]

Certain Computer Network Security Equipment and Systems, Related Software, Components Thereof, and Products Containing Same; Notice of Commission Determination To Review in Part and, on Review, To Affirm a Final Initial Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (''Final ID'') issued by the presiding administrative law judge (''ALJ'') finding no violation of section 337 of the Tariff Act of 1930, with respect to U.S. Patent Nos. 9,264,370 (''the '370 patent''); 10,193,917 (''the '917 patent''); and 10,284,526 (''the '526 patent''). On review, the Commission has determined to take no position regarding whether the economic prong of the domestic industry requirement is satisfied, and to affirm under modified reasoning the Final ID's finding of no violation of section 337 with respect to those patents. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 24, 2022, the Commission instituted this investigation based on a complaint, as amended and supplemented, filed on behalf of Centripetal Networks, Inc. of Reston, Virginia. 87 FR 31581–82 (May 24, 2022). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computer network security equipment and systems, related software, components thereof, and products containing the same that infringe certain claims of the '370 patent, the '917 patent, and the '526 patent. *Id.* at 31581. The complaint also alleged that a domestic industry exists. *Id.* The Commission's notice of investigation names Keysight Technologies, Inc. of Santa Rosa, California (''Keysight'') as a respondent. *Id.* The Office of Unfair Import Investigations (''OUII'') is participating in this investigation. *Id.*

On January 20, 2023, the complainant provided notice that it changed its name to Centripetal Networks, LLC (''Centripetal''). Complainant's Notice of Corporate Name Change (Jan. 20, 2023). On March 6, 2023, the Commission granted the complainant's motion to amend the complainant and notice of the investigation to reflect the name change. Order No. 32 (Feb. 3, 2023), *unreviewed by* Comm'n Notice (Mar. 6, 2023).

Centripetal originally asserted that Keysight violated section 337 based on infringement of claims 22–27, 42–48, and 63 of the '370 patent; claims 1, 5, 11, 15, and 20 of the '917 patent; and claims 1–3, 6, 11–13, and 16 of the '526 patent. 87 FR at 31581–82. The Commission previously terminated the investigation with respect to claims 23–27, 42, 44–48, and 63 of the '370 patent, claims 1, 5, and 15 of the '917 patent,

and claims 2, 6 and 12 of the '526 patent based on Centripetal's partial withdrawal of the complaint. Order No. 27 (Jan. 27, 2023), *unreviewed by* Comm'n Notice (Feb. 24, 2023); Order No. 39 (Feb. 27, 2023), *unreviewed by* Comm'n Notice (Mar. 29, 2023). Accordingly, at the time of the evidentiary hearing, claims 22 and 43 of the '370 patent, claims 11 and 20 of the '917 patent, and claims 1, 3, 11, 13, and 16 of the '526 patent remained at issue.

On September 26, 2022, the ALJ conducted a *Markman* hearing. On February 22, 2023, the ALJ issued a claim construction order. Order No. 37 (Feb. 22, 2023). The ALJ held an evidentiary hearing on March 1–3 and 6–7, 2023.

On August 8, 2023, the ALJ issued the Final ID finding no violation of section 337 with respect to any asserted patent. Specifically, the Final ID finds that: (1) with respect to the '370 patent, claims 22 and 43 are not infringed and are invalid for being directed to unpatentable subject matter under 35 U.S.C. 101, and the technical prong of the domestic industry requirement is not satisfied; (2) with respect to the '917 patent claims 11 and 20 are infringed and the technical prong of the domestic industry requirement is satisfied, but the asserted claims are invalid as obvious under 35 U.S.C. 103; and (3) with respect to the '526 patent, claims 1, 3, 11, 13, and 16 of the '526 patent are not infringed and are invalid as anticipated under 35 U.S.C. 102, but the technical prong of the domestic industry requirement is satisfied. Finally, the Final ID finds that Centripetal has satisfied the economic prong of the domestic industry requirement under Section 337(a)(3)(A) and (B) with respect to each of the asserted patents.

The ALJ recommended that, if the Commission were to find a violation of section 337, the Commission should issue a limited exclusion order and cease and desist order with respect to Keysight. The ALJ also recommended that, should a violation be found, the bond rate be set at a 100 percent of entered value of the products imported during the period of Presidential review.

On August 14, 2023, the Commission requested comments from the public and interested government agencies regarding any public interest issues raised by the ALJ's recommended determination on remedy and bonding. 88 FR 55067–68 (Aug. 14, 2023). The Commission received no comments from the public or government agencies. On September 7, 2023, Centripetal and Keysight provided comments on the public interest pursuant to Commission Rule 210.50(a)(4). 19 CFR 210.50(a)(4).

On August 23, 2023, Centripetal filed a petition for review challenging the Final ID's findings that: (1) the '370 patent claims are not infringed or invalid for being directed to unpatentable subject matter, and that the technical prong of the domestic industry requirement is not satisfied as to that patent; (2) the '917 patent claims are invalid for obviousness; and (3) the '526 claims are not infringed and invalid for anticipation. On September 1, 2023, Keysight and OUII filed responses opposing the petition for review.

Having examined the record of this investigation, including the ALJ's Final ID, the petitions for review, and the responses thereto, the Commission has determined to review the Final ID in part and, on review, to affirm the Final ID's finding of no violation. Specifically, the Commission reviews the Final ID's finding that Centripetal waived its argument that the Check Point R77.30 prior art software does not satisfy the limitation ''creat[ing] the list of the identification data based on the received at least one list of network addresses and/or domain names'' in claims 3 and 13 of the '526 patent. The Final ID finds waiver because Centripetal failed to contest that limitation in its prehearing brief. *Id.* at 203–204. Centripetal, however, showed that it argued in its prehearing brief that the Application and URL Filter do not satisfy the claim language because that functionality is performed after decryption. Pet. at 76. Accordingly, the Commission determines to review the Final ID's finding of waiver, and, on review, finds that Centripetal did not waive its argument.

The Commission, however, determines to affirm under modified reasoning the Final ID's finding that Check Point R77.30 satisfies the limitation ''creat[ing] the list of the identification data based on the received at least one list of network addresses and/or domain names.'' In addition to the reasons found in the Final ID, and as argued by OUII, the Application and URL Filter satisfy the claim language because the filter uses category-based rules based on a subscription service to determine what traffic to decrypt and inspect. *See* RX–0529.0039–41 (describing a HTTPS inspection policy with rules that use subscription-service categories to inspect traffic); *id.* at .0035 (explaining that HTTPS inspection involves decrypting data, inspecting the clear text, and re-encrypting the data).

The Commission has also determined to review the Final ID's finding that the economic prong of the domestic industry requirement is satisfied. On review, the Commission has determined to take no position as to whether the economic prong of the domestic industry requirement is satisfied.

The Commission has determined not to review the remainder of the Final ID. Consequently, the Commission finds no violation of section 337 with respect to any asserted patent. This investigation is hereby terminated with a finding of no violation of section 337.

The Commission vote for this determination took place on December 5, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 5, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–27050 Filed 12–8–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1607–1611 (Final)]

Boltless Steel Shelving Units Prepackaged for Sale From India, Malaysia, Taiwan, Thailand, and Vietnam; Scheduling of the Final Phase of Antidumping Duty Investigations

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1607–1611 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of boltless steel shelving units prepackaged for sale (''boltless steel shelving'') from India, Malaysia, Taiwan, Thailand, and Vietnam, provided for in subheading 9403.20.00 of the Harmonized Tariff Schedule of the United States. The Department of Commerce (''Commerce'') has preliminarily determined imports of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam to be sold at less-than-fair value. In addition, Commerce has made negative

preliminary determinations of sales at less-than-fair value in the antidumping duty investigation on boltless steel shelving from India.

DATES: November 29, 2023.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202–205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws.'' [1]

Background.—The final phase of these investigations is being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of affirmative preliminary determinations by Commerce that imports of boltless steel shelving units prepackaged for sale from Malaysia, Taiwan, Thailand, and Vietnam are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on April 25, 2023, by Edsal Manufacturing Co., Inc., Chicago, Illinois.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Although Commerce has preliminarily determined that imports of boltless steel shelving units prepackaged for sale from India are not being and are not likely to be sold in the United States at less than fair value, for purposes of efficiency the Commission hereby waives rule 207.21(b) [2] so that the final phase of the investigations may proceed concurrently in the event that Commerce makes a final affirmative determinations with respect to such imports.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 26, 2024, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Thursday, April 11, 2024. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Thursday, April 4, 2024. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3pm the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on Friday, April 5, 2024. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00pm on April 10, 2024. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the

[1] A full description of the subject merchandise covered in the scope of these investigations is contained in the **Federal Register** notices of Commerce's preliminary antidumping duty determinations on boltless steel shelving. See 88 FR 83382, November 29, 2023; 88 FR 83386, November 29, 2023; 88 FR 83389, November 29, 2023; 88 FR 83392, November 29, 2023; and 88 FR 83395, November 29, 2023.

[2] § 207.21(b) of the Commission's rules provides that, where Commerce has issued a negative preliminary determination, the Commission will publish a Final Phase Notice of Scheduling upon receipt of an affirmative final determination from Commerce.

Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is April 2, 2024. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 18, 2024. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before April 18, 2024. On May 8, 2024, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 10, 2024, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 6, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–27151 Filed 12–8–23; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public), which will be held at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington DC, on January 4 and 5, 2024.

DATES: Thursday, January 4, 2024, from 9 a.m. to 5 p.m., and Friday, January 5, 2024, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (202) 317–3648 or *elizabeth.j.vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, on Thursday, January 4, 2024, from 9 a.m. to 5 p.m. and Friday, January 5, 2024, from 8:30 a.m. to 4 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2023 Pension (EA–2F) to make recommendations relative thereto, including the minimum acceptable passing score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2024 Basic (EA–1) Examination and the May 2024 Pension (EA–2L) Examination also will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. 1009, that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the November 2023 EA–2F Examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 4, 2024, and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should contact the Designated Federal Officer at *NHQJBEA@IRS.GOV* and include the written text or outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. Persons who wish to attend the public session should contact the Designated Federal Officer at *NHQJBEA@IRS.GOV* to obtain access instructions. Notifications of intent to make an oral statement or to attend the meeting must be sent electronically to the Designated Federal Officer no later than December 29, 2023. In addition, any interested person may file a written statement for consideration by the Joint Board and the Advisory Committee by sending it to *NHQJBEA@IRS.GOV.*

Dated: December 5, 2023.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2023–27058 Filed 12–8–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0100]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement of a Previously Approved Collection; Census of Jails 2024–26

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Justice Statistics, 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.

DATES: Comments are encouraged and will be accepted for 60 days until February 9, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Zhen Zeng, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Zhen.Zeng@usdoj.gov;* telephone: 202–598–9955).

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 Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Since 1970, BJS has conducted the Census of Jails (COJ, OMB Control No. 1121–0010) every 5–6 years to gather data on jail facilities and inmate populations. The most recent COJ was conducted in 2019 and collected data from around 2,900 U.S. local jails. The COJ is BJS's most comprehensive collection of jail data and serves as the sampling frame for BJS's other jail surveys. In the years when the COJ is not fielded, BJS administers the Annual Survey of Jails (ASJ, OMB Control No. 1121–0094) to one third of the local jails nationwide. However, the ASJ's sample size is not sufficient to produce state-level estimates. To address this gap, BJS proposes to replace the ASJ with an annual census starting in 2025. The change will ensure that policymakers, correctional administrators, and government officials have timely and relevant data for policy development, budget planning, and oversight. The 2025 and 2026 COJ forms will be shorter, resembling the ASJ form in scope, with 16 items related to jail populations and facility characteristics. In 2024, the COJ will collect comprehensive data on jail population size and characteristics, such as one-day counts, demographics, conviction status, holds for federal and state prison authorities. It will also cover facility characteristics and jail programs. Notably, the 2024 COJ includes a special module on opioids use disorder screening and treatment which updates data first collected in 2019.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatment of a previously approved collection.

2. *The Title of the Form/Collection:* Census of Jails (COJ).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The COJ contains one form—CJ–3: Census of Jails. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public is state, local, and tribal governments. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The total estimated number of respondents is 2,900 for each year of collection.

It takes 150 minutes to complete the 2024 COJ form. About 70% of the respondents (2,030) will be contacted for data quality follow-up and each follow-up will take 10 minutes. The total burden for the 2024 COJ is 7,588 hours. The 2025 and 2026 COJ forms are shorter than the 2024 form and take 80 minutes per response. The estimated time and number of respondents for data quality follow-up remain the same. In addition, it takes 5 minutes to verify jail status and point-of-contact per jail for the 2025 and 2026 COJ. The burden for the 2025 and 2026 COJ is 4,447 hours for each collection. Jail verification takes 10 minutes per jail for the 2024 COJ. This burden is covered by BJS's generic clearance agreement (OMB Control Number 1121–0339) and excluded from the current OMB application.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The average annual burden is 5,494 hours, or 16,482 hours for three years of data collection.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The estimated cost is $494,460.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Average reporting time (min)	Total annual burden (hours)
2024 COJ					
Data collection	2,900	Annual	2,900	150	7,250
Data quality follow-up	2,030	Annual	2,030	10	338
Unduplicated Totals	2,900				7,588
2025 COJ					
Data collection	2,900	Annual	2,900	80	3,867
Data quality follow-up	2,030	Annual	2,030	10	338
Jail status and point-of-contact verification	2,900	Annual	2,900	5	242

TOTAL BURDEN HOURS—Continued

Activity	Number of respondents	Frequency	Total annual responses	Average reporting time (min)	Total annual burden (hours)
Unduplicated Totals	2,900				4,447
2026 COJ					
Data collection	2,900	Annual	2,900	80	3,867
Data quality follow-up	2,030	Annual	2,030	10	338
Jail status and point-of-contact verification	2,900	Annual	2,900	5	242
Unduplicated Totals	2,900				4,447
Unduplicated Totals for 2024, 2025, and 2026 COJ	2,900				16,482

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: December 6, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–27096 Filed 12–8–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023–21; Exemption Application No. D–11955]

Exemption From Certain Prohibited Transaction Restrictions Involving Morgan Stanley & Co. LLC, and Current and Future Affiliates and Subsidiaries (Morgan Stanley or the Applicant) Located in New York, New York

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) 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).

DATES: The exemption will be in effect on the date that this grant notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 18, 2021, the Department published a notice of proposed exemption in the **Federal Register** at 86 FR 64695, permitting Morgan Stanley & Co. LLC, or an affiliate of Morgan Stanley & Co. LLC (together, Morgan Stanley) to engage in certain transactions with Mitsubishi UFJ Financial Group, Inc., or an affiliate of Mitsubishi UFJ Financial Group, Inc. (together Mitsubishi).

Under the exemption, certain restrictions of ERISA sections 406(a) and 406(b) and certain sanctions resulting from the application of Code section 4975,[1] shall not apply to transactions involving Morgan Stanley and Mitsubishi (described below) that are modeled after the following class exemptions: Prohibited Transaction Exemption (PTE) 75–1, Part III and Part IV, PTE 77–3, PTE 77–4, PTE 79–13, PTE 86–128, and PTE 2002–12, provided the conditions of this exemption are met.[2] This exemption provides only the relief specified in its text and does not provide relief from violations of any law other than the prohibited transaction provisions of ERISA expressly stated herein. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA section 408(a) in accordance with the Department's procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Background

Currently, Mitsubishi is the largest investor in Morgan Stanley, holding 24.5 percent of Morgan Stanley's outstanding common stock. Mitsubishi also currently nominates two directors to Morgan Stanley's board of directors. Despite this ownership interest, the Applicant states that Mitsubishi does not have sufficient control over Morgan Stanley to warrant treatment of Mitsubishi and Morgan Stanley as ''affiliates'' within the meaning of certain Applicable Class Exemptions, which are described below.[3]

The Department has granted a wide variety of class exemptions that permit affiliated parties to engage in specified plan-related transactions, provided that certain protective conditions are met. The following seven class exemptions (the Applicable Class Exemptions) are relevant to this exemption:

PTE 75–1, Part III permits a fiduciary to cause a plan to purchase securities from a member of an underwriting syndicate, when the fiduciary is also a member of such syndicate, and the member selling the securities to the plan is not affiliated with the fiduciary. The

[1] For purposes of this proposed exemption reference to specific provisions of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding Code provisions.

[2] Part III and Part IV of Prohibited Transaction Exemption 75–1 (PTE 75–1 Parts III and IV)(40 FR 50845, October 31, 1975); Prohibited Transaction Exemption 77–3 (PTE 77–3) (42 FR 18734, April 8, 1977); Prohibited Transaction Exemption 77–4 (PTE 77–4) (42 FR 18732, April 8, 1977); Prohibited Transaction Exemption 79–13 (PTE 79–13) (44 FR 25533, May 1, 1979); Prohibited Transaction Exemption 86–128 (PTE 86–128) (51 FR 41686, November 18, 1986), as amended by (67 FR 64137, October 17, 2002); Prohibited Transaction Exemption 2002–12 (PTE 2002–12)(67 FR 9483, March 1, 2002).

[3] For example, Section I(b) of PTE 86–128 defines an ''affiliate'' as, in relevant part, ''any person directly controlling, controlled by, or under common control with the person . . .'' where ''[t]he term 'control' means the power to exercise a controlling influence over the management or policies of a person other than an individual.'' By granting this exemption, the Department does not express any view on whether Mitsubishi and Morgan Stanley are or are not ''affiliates'' within the meaning of the Applicable Exemptions.

class exemption defines the term ''fiduciary'' to include ''affiliates'' of the fiduciary.

PTE 75–1, Part IV permits a plan to purchase or sell securities in a principal transaction with a fiduciary that is also a ''market-maker'' with respect to such securities. For purposes of the exemption, the term ''fiduciary'' includes ''affiliates'' of the fiduciary.

PTE 77–3 permits the acquisition or sale of shares of a registered open-end investment company (a mutual fund) by a plan that covers only employees of the mutual fund, the mutual fund's investment adviser, the mutual fund's underwriter, or an affiliate thereof.

PTE 77–4 permits the purchase or sale by a plan of shares of a mutual fund, where the mutual fund's investment adviser is a plan fiduciary, or is affiliated with a plan fiduciary, but is not an employer of employees covered by the plan.

PTE 79–13 permits the purchase, ownership, and sale of shares of a closed-end mutual fund by a plan, where such plan covers only employees of the closed-end mutual fund, employees of an investment adviser to the closed-end mutual fund, or employees of an affiliate of the closed-end mutual fund or investment adviser.

PTE 86–128 provides an exemption for certain fiduciaries and their affiliates to receive a fee from a plan or IRA for effecting or executing securities transactions as an agent on behalf of the plan or IRA. PTE 86–128 also allows a fiduciary (or an affiliate of a fiduciary) to act as an agent in an ''agency cross transaction'' for both a plan (or IRA) and for another party to the transaction, and to receive reasonable compensation from another party to the transaction.

PTE 2002–12 permits the cross-trading of securities by and between certain index and model-driven funds managed by investment ''managers,'' and among index and model-driven funds, and certain large accounts, that engage such ''managers.'' For purposes of PTE 2002–12, the term ''manager'' includes affiliates of the ''manager.''

Assuming that Morgan Stanley and Mitsubishi are not affiliates for the purposes of the Applicable Class Exemptions, as they indicate,[4] they could not engage in the affiliated transactions described above without violating ERISA Section 406. Morgan Stanley, therefore, requested an exemption that, in general terms, would allow Morgan Stanley and Mitsubishi to treat the other as an ''affiliate'' for purposes of the Applicable Class Exemptions when engaging in transactions that would otherwise mirror the affiliated transactions described above.

The Applicant represents that the exemption would enhance plans investment and service provider options. According to Morgan Stanley, plan participants would have access to more counterparties and investment products in the market. In addition, the plans would have access to more efficient and less expensive brokerage services.

This exemption contains certain new conditions that are not otherwise found in the Applicable Class Exemptions (the New Conditions). One New Condition requires the Morgan Stanley/Mitsubishi Entities to comply with a new ''Impartial Conduct Standard'' and act in the Best Interest of plans. Another New Condition requires the Morgan Stanley/Mitsubishi Entity to provide plans with written notice that discloses (a) the ownership relationship between Morgan Stanley and Mitsubishi, and (b) that the transactions will provide a benefit to Morgan Stanley and/or Mitsubishi, and/or involve a conflict of interest.

The Department granted each Applicable Class Exemption after determining on the record that each exemption was administratively feasible and in the interest of and protective of affected plans. Given that the transactions in this exemption are substantially similar to those permitted by the Applicable Class Exemptions, subject to not only essentially the same suite of conditions, but also to the New Conditions, the Department has determined that this exemption is administratively feasible and in the interest of, and protective of, affected plans and their participants and beneficiaries.

Written Comments

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due to the Department by January 18, 2022. The Department received one written comment from the Applicant. The Department did not receive any requests for a public hearing.

Comments From the Applicant

Factual Clarification 1: Representation 3 of the proposed exemption states as follows: ''Immediately after the conversion, Mitsubishi-owned shares of Morgan Stanley Common Stock represented approximately 22.56% of the outstanding shares of Morgan Stanley Common Stock. Subsequently, Mitsubishi's ownership percentage of Morgan Stanley common stock gradually increased because of Morgan Stanley's ongoing repurchases of stock from other investors.'' [5]

The Applicant states: (a) Mitsubishi's ownership interest in Morgan Stanley has decreased since Morgan Stanley agreed to convert all Mitsubishi-owned Morgan Stanley Series B Preferred Stock into Morgan Stanley common stock; (b) it cannot represent that Mitsubishi's ownership interest has decreased because of stock repurchases from others; and (c) it cannot confirm the 22.56% ownership interest referenced in the proposed exemption, as that was not a fact that the Applicant provided to the Department.

Department's Response: The Department accepts the clarifications noted by the Applicant.

Factual Clarification 2: Representation 3 of the proposed exemption states as follows: ''Mitsubishi is currently the largest investor in Morgan Stanley, holding 24.5 percent of Morgan Stanley's outstanding common stock.'' The Applicant states that, while Mitsubishi did hold 24.5 percent of Morgan Stanley's outstanding common stock on the date of the Applicant's application to the Department (June 4, 2018), Mitsubishi's investment in Morgan Stanley had decreased to 20.2% as of March 22, 2021.

Department's Response: The Department accepts Applicant's requested clarification but notes that, as of June 30, 2023, Mitsubishi's investment in Morgan Stanley equaled 22.76 percent. The Department also notes that, as of June 30, 2023, Mitsubishi remained the largest investor in Morgan Stanley.

Department's Note: The summary to the proposed exemption stated that relief granted in PTE 77–4 was limited to ERISA section 406(a)(1)(B) and ERISA section 406(b). Part IV of the proposed exemption, which extends exemptive relief for PTE 77–4-type transactions, erroneously included exemptive relief from ERISA section 406(a)(1)(D). The Department has revised Part IV of this exemption for consistency with the proposed exemption's summary, and limited exemptive relief for PTE 77–4-type transactions to ERISA sections 406(a)(1)(B) and 406(b). Further, the Department revised some of the

[4] As previously stated, the Department does not express any view on whether Mitsubishi and Morgan Stanley are or are not ''affiliates'' within the meaning of the Applicable Exemptions.

[5] 86 FR 64696.

language in the sections below for clarity.

The complete application file (D–11955) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published in the **Federal Register** on November 18, 2021, at 86 FR 64695.

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) does not relieve a fiduciary or other party in interest from requirements of other ERISA provisions, 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 fiduciaries to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a)(1)(B).

(2) As required by ERISA section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of affected plans and of their participants and beneficiaries; and (c) protective of the rights of participants and beneficiaries of such plans.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, 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 determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the following exemption under the authority of ERISA section 408(a), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B:[6]

Exemption

Section II. Covered Transactions

Part I. Proposed Exemption From the Prohibitions Respecting Certain Classes of Transactions Involving Plans and Certain Underwriters (Modeled After PTE 75–1, Part III)

The restrictions of ERISA section 406 and the taxes imposed Code section 4975 (a) and (b), by reason of Code section 4975(c)(1), shall not apply to the purchase or other acquisition of certain securities by a plan during the existence of an underwriting or selling syndicate with respect to such securities, from any person other than Morgan Stanley or Mitsubishi, when a Morgan Stanley/Mitsubishi Entity is a fiduciary with respect to such plan, and a Related Entity is a member of such syndicate, provided that the following conditions are met:

(a) No Morgan Stanley/Mitsubishi Entity or Related Entity that is involved in causing a plan to make the purchase is a manager of such underwriting or selling syndicate. The term ''manager'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(b) The securities to be purchased or otherwise acquired are:

(1) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) or, if exempt from such registration requirement, are:

(i) Issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States, pursuant to authority granted by the Congress of the United States,

(ii) Issued by a bank,

(iii) Issued by a common or contract carrier, if such issuance is subject to the provisions of section 20a of the Interstate Commerce Act, as amended,

(iv) Exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act, or are

(v) The subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) (the 1934 Act), and the issuer of which has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of securities and has filed all the reports required to be filed thereunder with the SEC during the preceding twelve (12) months.

(2) Purchased at not more than the public offering price before the end of the first full business day after the final terms of the securities have been fixed and announced to the public, except that:

(i) If such securities are offered for subscription upon exercise of rights, they are purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a public offering price on a day after the end of such first full business day, provided that the interest rates on comparable debt securities offered to the public after such first full business day and before the purchase are less than the interest rate of the debt securities being purchased.

(3) Offered pursuant to an underwriting agreement under which the members of the syndicate are committed to purchase all securities being offered, except if:

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) Such securities are offered pursuant to an over-allotment option.

(c) The issuer of such securities has been in continuous operation for not less than three (3) years, including the operations of any predecessors, unless

(1) Such securities are non-convertible debt securities rated in one of the four (4) highest rating categories by at least one (1) of the Rating Agencies, as defined below in Part IX (e);

(2) Such securities are issued or fully guaranteed by a person described above in subparagraph (b)(1)(i) of this Part I; or

(3) Such securities are fully guaranteed by a person who has issued securities described above in subparagraph (b)(1)(ii), (iii), (iv), or (v) of Part I, and in this subparagraph (c) of Part I.

(d) The amount of such securities to be purchased or otherwise acquired by a plan, pursuant to this exemption and PTE 75–1, Part III, does not exceed 3 percent (3%) of the total amount of such securities being offered.

(e) The consideration to be paid by a plan in purchasing or otherwise acquiring such securities pursuant to this exemption and PTE 75–1, Part III, does not exceed 3 percent (3%) of the

[6] 76 FR 66637, 66644 (October 27, 2011).

fair market value of the total assets of such plan as of the last day of the most recent fiscal quarter of such plan before to such transaction, provided that if such consideration exceeds $1 million, it does not exceed one percent (1%) of such fair market value of the total assets of such plan.

If such securities are purchased by a plan from a party in interest or disqualified person with respect to such plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under ERISA section 502(i) or the taxes imposed by Code section 4975(a) and (b) if the conditions of this exemption are not met. However, if such securities are purchased from a party in interest or disqualified person with respect to a plan, the restrictions of ERISA section 406(a) shall apply to any Morgan Stanley/Mitsubishi Entity acting as fiduciary with respect to such plan, and the taxes imposed by Code section 4975(a) and (b) by reason of Code section 4975(c)(1)(A) through (D), shall apply to such party in interest or disqualified person, unless the conditions for exemption of PTE 75–1 (40 FR 50845, October 31, 1975), Part II (relating to certain principal transactions) are met.

Part II. Proposed Exemption From Prohibitions Respecting Certain Classes of Transactions Involving Plans and Market-Makers (Modeled After PTE 75–1, Part IV)

The restrictions of ERISA section 406, and the taxes imposed by Code section 4975 (a) and (b), by reason of Code section 4975(c)(1), shall not apply to any purchase or sale of any securities by a plan from or to a Related Entity which is a market-maker with respect to such securities, when a Morgan Stanley/Mitsubishi Entity is a fiduciary with respect to such plan, provided that the following conditions are met:

(a) The issuer of such securities has been in continuous operation for not less than three (3) years, including the operations of any predecessors, unless such securities are:

(1) non-convertible debt securities rated in one of the four (4) highest rating categories by at least one (1) of the Rating Agencies;

(2) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) fully guaranteed by a person described in this subparagraph (a).

(b) As a result of purchasing such securities:

(1) The fair market value of the aggregate amount of securities owned, directly or indirectly, by a plan and with respect to which a Morgan Stanley/Mitsubishi Entity is a fiduciary, pursuant to this exemption and PTE 75–1, Part IV, does not exceed three percent (3%) of the fair market value of the plan's assets with respect to which the Morgan Stanley/Mitsubishi Entity is a fiduciary, as of the last day of the most recent fiscal quarter of such plan before the transaction, provided that if the fair market value of such securities exceeds $1 million, it does not exceed one percent (1%) of the fair market value of the plan's assets, except that this subparagraph shall not apply to securities described in subparagraph (a)(2) of this Part II, above; and

(2) The fair market value of the aggregate amount of all securities for which any Related Entity is a market-maker, which are owned, directly or indirectly, by a plan and with respect to which a Morgan Stanley/Mitsubishi Entity is a fiduciary, pursuant to this exemption and PTE 75–1, Part IV, does not exceed 10 percent (10%) of the fair market value of the plan's assets with respect to which the Morgan Stanley/Mitsubishi Entity is a fiduciary, as of the last day of the most recent fiscal quarter of such plan before such transaction, except that this subparagraph shall not apply to securities described in subparagraph (a)(2) of this Part II.

(c) At least one (1) person other than a Related Entity is a market-maker with respect to such securities.

(d) The transaction is executed at a net price to a plan for the number of shares or other units to be purchased or sold in the transaction that is more favorable to such plan than that which the Morgan Stanley/Mitsubishi Entity, acting as fiduciary and acting in good faith, reasonably believes to be available at the time of such transaction from all other market-makers with respect to the securities.

For purposes of this Part II, the term ''market-maker'' shall mean any specialist permitted to act as a dealer, and any dealer who, with respect to a security, holds themselves out as being willing to buy and sell such security for their own account on a regular or continuous basis by entering quotations in an inter-dealer communications system or otherwise.

Part III. Proposed Exemption Involving Mutual Fund In-House Plans (Modeled After PTE 77–3)

The restrictions of ERISA sections 406 and 407(a) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1), shall not apply to the acquisition or sale of shares of an open end investment company registered under the Investment Company Act of 1940 (the 1940 Act) by an benefit plan covering only employees of a Morgan Stanley/Mitsubishi Entity where a Related Entity is an investment adviser or principal underwriter with respect to the open-end investment company, provided the following conditions are met (whether or not such investment company, investment adviser, principal underwriter or any affiliated person thereof is a fiduciary with respect to the plan):

(a) The plan does not pay any investment management, investment advisory or other fees or compensation to any Morgan Stanley/Mitsubishi Entity or Related Entity, except to the extent expressly permitted herein. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares, unless (1) such redemption fee is paid only to the investment company, and (2) the existence of such redemption fee is disclosed in the investment company prospectus in effect both at the time of the acquisition of such shares and at the time of such sale.

(c) The plan does not pay a sales commission in connection with such acquisition or sale.

(d) All dealings between the plan and the investment company, the Related Entity, any other investment adviser or principal underwriter for the investment company, or any affiliated person (as defined in section 2(a)(3) of the 1940 Act) of the Related Entity, other investment adviser, or principal underwriter, are on a basis no less favorable to the plan than such dealings are with other shareholders of the investment company.

Part IV. Proposed Exemption for Certain Transactions Between Investment Companies and Plans (Modeled After PTE 77–4)

The restrictions of ERISA section 406(a)(1)(B) and 406(b) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(B), (D), (E) and (F), shall not apply to the purchase or sale by a plan of shares of an open-end investment company registered under the 1940 Act, where a Related Entity is the investment adviser of the investment company and a Morgan Stanley/Mitsubishi Entity is a

fiduciary with respect to the plan, but not an employer of employees covered by the plan, provided that the following conditions are met:

(a) The plan does not pay a sales commission in connection with such purchase or sale.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares unless:

(1) The redemption fee is paid only to the investment company, and

(2) The existence of the redemption fee is disclosed in the investment company prospectus in effect both at the time of the purchase of the shares and at the time of the sale.

(c) The plan does not pay an investment management, investment advisory or other fee or compensation, with respect to the plan assets invested in the shares for the entire period of the investment, except to the extent expressly permitted herein. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act. This condition also does not preclude payment of an investment advisory fee by the plan based on the total plan assets from which a credit has been subtracted representing the plan's pro rata share of the investment advisory fees paid by the investment company. If, during any fee period for which the plan has prepaid its investment management, investment advisory or similar fee, the plan purchases shares of the investment company, the requirement of this subparagraph (c) shall be deemed met with respect to such prepaid fee if, by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to the plan assets invested in the investment company shares: (1) is anticipated and subtracted from the prepaid fee at the time of payment of the fee; (2) is returned to the plan no later than during the immediately following fee period; or (3) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this subparagraph (c), a fee shall be deemed to be prepaid for any fee period if the amount of the fee is calculated as of a date no later than the first day of such period.

(d) A second fiduciary with respect to the plan, who is independent of and unrelated to Morgan Stanley and Mitsubishi, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by such plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the Morgan Stanley/Mitsubishi Entity may consider such purchases to be appropriate for the plan, and whether there are any limitations on the Morgan Stanley/Mitsubishi Entity with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations. For purposes of this subparagraph (d), the second fiduciary will not be deemed to be independent of and unrelated to Morgan Stanley and Mitsubishi if:

(1) The second fiduciary directly or indirectly controls, is controlled by, or is under common control with Morgan Stanley or Mitsubishi;

(2) The second fiduciary, or any officer, director, partner, employee or relative of such second fiduciary is an officer, director, partner or employee of Morgan Stanley or Mitsubishi; or

(3) The second fiduciary directly or indirectly receives any compensation or other consideration for their own personal account in connection with any transaction described in this Part IV.

Subparagraph (d)(2) of this Part IV shall not apply If an officer, director, partner, employee or relative of any Morgan Stanley or Mitsubishi entity is a director of such second fiduciary, and if they abstain from participation in:

(i) The choice of the plan's investment adviser,

(ii) The approval of any purchase or sale between the plan and the investment company, and

(iii) The approval of any change of fees charged to or paid by such plan.

For purposes of subparagraph (d)(1) above, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual, and the term ''relative'' means a ''relative'' as that term is defined in ERISA section 3(15) (or a ''member of the family'' as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or a sister.

(e) On the basis of the prospectus and disclosure referred to in subparagraph (d), the second fiduciary referred to in subparagraph (d) approves such purchases and sales consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of ERISA. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by such plan and need not relate to any other aspects of such investments. In addition, such approval must be either:

(1) Set forth in such plan's plan documents or in the investment management agreement between the plan and the Morgan Stanley/Mitsubishi Entity,

(2) Indicated in writing before each purchase or sale, or

(3) Indicated in writing before commencement of a specified purchase or sale program in the shares of such investment company.

(f) The second fiduciary referred to in subparagraph (d) above, or any successor thereto, is notified of any change in any of the rates and fees referred to in subparagraph (d) and approves in writing the continuation of such purchases or sales and the continued holding of any investment company shares acquired by such plan prior to such change and still held by such plan. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by such plan and need not relate to any other aspects of such investment.

(g) Each Morgan Stanley/Mitsubishi Entity and Related Entity must satisfy ERISA section 408(b)(2) or Code section 4975(d)(2), as applicable.

Part V. Proposed Exemption Involving Closed-End Investment Company and In-House Plans (Modeled After PTE 79–13)

The restrictions of ERISA sections 406 and 407(a), and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1), shall not apply to the acquisition, ownership, or sale of shares of a closed-end investment company which is registered under the Investment Company Act of 1940 Act (1940 Act) and is not a ''small business investment company,'' as defined in section 103 of the Small Business Investment Company Act of 1958, with respect to which a Related Entity is an investment adviser, by an employee benefit plan covering only employees of a Morgan Stanley/Mitsubishi Entity, provided that the following conditions are met (whether or not such investment company, investment adviser or any affiliated person thereof is a fiduciary with respect to the plan):

(a) The plan does not pay any investment management, investment advisory, or other fee or compensation to any Morgan Stanley/Mitsubishi Entity or Related Entity, except as expressly permitted herein. This condition does not preclude the payment of investment advisory fees by

the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act.

(b) The plan does not pay a sales commission in connection with such acquisition or sale to any such investment company, or investment adviser, or any Morgan Stanley/Mitsubishi Entity or Related Entity; and

(c) All dealings between the plan and such investment company, the investment adviser, or any Morgan Stanley/Mitsubishi Entity or Related Entity, are on a basis no less favorable to the plan than such dealings are with other shareholders of the investment company.

Part VI. Proposed Exemption for Securities Transactions Involving Plans and Broker-Dealers (Modeled After PTE 86–128)

Section I: Definition and Special Rules

The following definitions and special rules apply to this Part VI:

(a) The term ''Morgan Stanley/Mitsubishi Entity'' means Morgan Stanley & Co. LLC (MS) or one of its ''affiliates,'' or Mitsubishi UFJ Financial Group, Inc. (Mitsubishi UFJ) or one of its ''affiliates,'' acting as the plan fiduciary authorizing a transaction covered by this Part.

(b) An ''affiliate'' of a Morgan Stanley/Mitsubishi Entity or a Related Entity, which is defined below, includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, MS or with Mitsubishi UFJ;

(2) Any officer, director, partner, employee, relative (as defined in ERISA section 3(15)), brother, sister, or spouse of a brother or sister, of a Morgan Stanley/Mitsubishi Entity or a Related Entity; and

(3) Any corporation or partnership of which a Morgan Stanley/Mitsubishi Entity or a Related Entity is an officer(s), director(s), or partner(s).

A person is not an affiliate of another person solely because such person has investment discretion over the other's assets. The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An ''agency cross transaction'' is a securities transaction in which the same Related Entity acts as agent for both any seller and any buyer for the purchase or sale of a security.

(d) The term ''covered transaction'' means an action described in Section II (a), (b), or (c) of this Part VI.

(e) The term ''effecting or executing a securities transaction'' means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial, or other functions ancillary thereto.

(f) A plan fiduciary is independent of a Morgan Stanley/Mitsubishi Entity and a Related Entity only if the fiduciary has no relationship to and no interest in MS and no interest in Mitsubishi UFJ that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term ''profit'' includes all charges relating to effecting or executing securities transactions, less reasonable and necessary expenses including reasonable indirect expenses (such as overhead costs) properly allocated to the performance of these transactions under generally accepted accounting principles.

(h) The term ''securities transaction'' means the purchase or sale of securities.

(i) The term ''nondiscretionary trustee'' of a plan means a trustee or custodian whose powers and duties with respect to any assets of the plan are limited to:

(1) The provision of nondiscretionary trust services to the plan, and

(2) Duties imposed on the trustee by any provision or provisions ERISA or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this Part VI, a person does not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

(j) The term ''Related Entity'' means MS or one of its ''affiliates,'' or Mitsubishi UFJ or one of its ''affiliates,'' where the entity is not the plan fiduciary authorizing a transaction covered by this Part.

Section II: Covered Transactions

If each condition in Section III below is either satisfied or not applicable under Section IV, the restrictions of ERISA section 406(b) and the taxes imposed by Code section 4975(a) and (b) by reason of Code section 4975(c)(1)(E) and (F) shall not apply to:

(a) a Morgan Stanley/Mitsubishi Entity, as a plan fiduciary, using its authority to cause the plan to pay a fee to a Related Entity, for effecting or executing securities transactions on behalf of the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency;

(b) a Related Entity, as the agent in an agency cross transaction, acting on behalf of: (1) a plan with a Morgan Stanley/Mitsubishi Entity as the plan fiduciary that used its authority to cause the transaction; and (2) one or more other parties to the agency cross transaction; and

(c) the receipt of reasonable compensation by a Related Entity for effecting or executing an agency cross transaction on behalf of a plan with a Morgan Stanley/Mitsubishi Entity as the plan fiduciary that used its authority to cause the transaction, where the reasonable compensation is received from one or more other parties to the agency cross transaction.

Section III: Conditions

Except to the extent otherwise provided in Section IV below, Section II applies only if the following conditions are satisfied:

(a) The Morgan Stanley/Mitsubishi Entity or Related Entity engaging in the covered transaction is not an administrator of the plan, or an employer any of whose employees are covered by the plan.

(b) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each plan whose assets are involved in the transaction that is independent of MS and Mitsubishi UFJ.

(c) The authorization referred to above in subparagraph (b) of this Section III is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized Morgan Stanley/Mitsubishi Entity of written notice of termination. A form expressly providing an election to terminate the authorization described in subparagraph (b) of this Section III with instructions on the use of the form must be supplied to the authorizing plan fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized Morgan Stanley/Mitsubishi Entity of written notice from the authorizing plan fiduciary or other plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of the authorized Morgan Stanley/Mitsubishi Entity to engage in the covered transactions on behalf of the plan.

(d) Within three (3) months before an authorization is made, the authorizing plan fiduciary is furnished with any reasonably available information that the Morgan Stanley/Mitsubishi Entity

seeking authorization reasonably believes is necessary for the authorizing plan fiduciary to determine whether the authorization should be made, including (but not limited to) (i) a copy of this proposed exemption and the associated granted exemption, (ii) the form for termination of authorization described in Section III(c) of this Part VI, (iii) a description of the Morgan Stanley/Mitsubishi Entity's brokerage placement practices, and (iv) any other reasonably available information regarding the matter that the authorizing plan fiduciary requests.

(e) The authorizing plan fiduciary is furnished with either:

(1) A confirmation slip for each securities transaction underlying a covered transaction within ten (10) business days after the securities transaction containing the information described in Rule 10b–10(a)(1–7) under the Securities and Exchange Act of 1934 (1934 Act), 17 CFR 240.10b–10; or

(2) At least once every three (3) months and not later than forty-five (45) days following the period to which it relates, a report disclosing:

(i) A compilation of the information that would be provided to a plan pursuant to subparagraph (e)(1) of this Section III during the three-month period covered by the report;

(ii) The total of all securities transaction-related charges incurred by the plan during such period in connection with such covered transactions; and

(iii) The amount of the securities transaction-related charges retained by the Related Entity and the amount of such charges paid to other persons for execution or other services.

For purposes of this subparagraph (e), the words ''incurred by the plan'' shall be construed to mean ''incurred by the pooled fund'' with respect to covered transactions engaged in on behalf of a pooled fund in which the plan participates.

(f) The authorizing plan fiduciary is furnished with a summary of the information required under subparagraph (e)(1) of this Section III at least once per year. The summary must be furnished within forty-five (45) days after the end of the period to which it relates, and must contain the following:

(1) The total of all securities transaction-related charges incurred by the plan during the period in connection with covered securities transactions.

(2) The amount of the securities transaction-related charges retained by the authorized Related Entity and the amount of these charges paid to other persons and their affiliates for execution or other services.

(3) A description of the Morgan Stanley/Mitsubishi Entity's brokerage placement practices, if such practices have materially changed during the period covered by the summary.

(4) (i) A portfolio turnover ratio, calculated in a manner which is reasonably designed to provide the authorizing plan fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this subparagraph (f)(4)(i) will be met if the ''annualized portfolio turnover ratio'', calculated in the manner described in subparagraph (f)(4)(ii), is contained in the summary.

(ii) The ''annualized portfolio turnover ratio'' must be calculated as a percentage of the plan assets consisting of securities or cash over which the authorized Morgan Stanley/Mitsubishi Entity had discretionary investment authority, or with respect to which such Morgan Stanley/Mitsubishi Entity rendered, or had any responsibility to render, investment advice (the portfolio) at any time or times (management period(s)) during the period covered by the report. First, the ''portfolio turnover ratio'' (not annualized) is obtained by dividing:

(A) The lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by

(B) The monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the market values of the portfolio securities as of the beginning and ending of each management period and as of the end of each month that ends within such period(s) and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one (1) year or less are excluded from both the numerator and the denominator. The ''annualized portfolio turnover ratio'' is then derived by multiplying the ''portfolio turnover ratio'' by an annualizing factor. The annualizing factor is obtained by dividing (C) the number twelve (12) by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

(iii) The information described in this subparagraph (f)(4) is not required to be furnished in any case where the authorized Morgan Stanley/Mitsubishi Entity acting as plan fiduciary has not exercised discretionary authority over trading in the plan's account during the period covered by the report.

For purposes of this subparagraph (f), the words, ''incurred by the plan,'' shall be construed to mean ''incurred by the pooled fund'' with respect to covered transactions engaged in on behalf of a pooled fund in which the plan participates.

(g) For an agency cross transaction with respect to which Section IV(a) of this Part VI does not apply, the following conditions must also be satisfied:

(1) The information required under Section III(d) or Section IV(c)(1)(ii) of this Part VI includes a statement to the effect that with respect to agency cross transactions, the entity effecting or executing the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under Section III(f) of this Part VI includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by the Related Entity engaging in the transactions in connection with those transactions during the period;

(3) The Morgan Stanley/Mitsubishi entity has the discretionary authority to act on behalf of, and/or provide investment advice to, either:

(i) One or more sellers, or

(ii) One or more buyers with respect to the transaction, but not both.

(4) The agency cross transaction is a purchase or sale for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; and

(5) The agency cross transaction is executed or effected at a price that is at or between the independent bid and independent ask prices for the security prevailing at the time of the transaction.

(h) A Morgan Stanley/Mitsubishi Entity serving as trustee (other than a nondiscretionary trustee) may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million. In the case of a pooled fund, the $50 million net asset requirement will be met, if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans each of which has total net assets with a value of at least $50 million.

For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in ERISA section 407(d)(7), the $50 million net asset requirement may be met by aggregating the assets of such

plans, if the assets are pooled for investment purposes in a single master trust.

(i) The Morgan Stanley/Mitsubishi Entity serving as trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing plan fiduciary of each plan the following:

(1) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with such trustee;

(2) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms not affiliated with such trustee;

(3) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with such trustee; and

(4) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms not affiliated with such trustee.

For purposes of this subparagraph (i), the words, ''paid by the plan,'' should be construed to mean ''paid by the pooled fund'' when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates.

Section IV: Exceptions From Conditions

(a) Certain agency cross transactions. Section III of this Part VI does not apply in the case of an agency cross transaction, provided that the Morgan Stanley/Mitsubishi Entity and/or Related Entity:

(1) Does not render investment advice to any plan for a fee within the meaning of ERISA section 3(21)(A)(ii) with respect to the transaction;

(2) Is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction, *see* 29 CFR 2510.3–21(d); and

(3) Does not have the authority to engage, retain or discharge any person who is or is proposed to be a fiduciary regarding any such plan assets.

(b) Recapture of profits. Section III(a) of this Part VI does not apply in any case where the entity engaging in a covered transaction returns or credits to the plan all profits earned by the entity in connection with the securities transactions associated with the covered transaction.

(c) Special rules for pooled funds. In the case of a covered transaction involving an account or fund for the collective investment of the assets of more than one plan (pooled fund):

(1) Section III (b), (c), and (d) of this Part VI do not apply if:

(i) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this subparagraph (c)(1), of an authorizing plan fiduciary with respect to each plan whose assets are invested in the pooled fund who is independent of the Morgan Stanley/Mitsubishi Entity and the Related Entity. The requirement that the authorizing plan fiduciary be independent shall not apply in the case of a plan covering only employees of a Morgan Stanley/Mitsubishi Entity, if the requirements of Section IV(c)(2)(i) and (ii) of this Part VI are met.

(ii) The authorizing plan fiduciary is furnished with any reasonably available information that the Morgan Stanley/Mitsubishi Entity engaging or proposing to engage in the covered transactions reasonably believes to be necessary for the authorizing plan fiduciary to determine whether the authorization should be given or continued, not less than thirty (30) days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of the Morgan Stanley/Mitsubishi Entity's brokerage placement practices, and, where requested, any reasonably available information regarding the matter upon the reasonable request of the authorizing plan fiduciary at any time.

(iii) In the event an authorizing plan fiduciary submits a notice in writing to the Morgan Stanley/Mitsubishi Entity engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in, or continuation of, the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to withdraw under this subparagraph (c)(1)(iii), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

(iv) In the case of a plan whose assets are proposed to be invested in the pooled fund after the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (c)(1)(ii) and (c)(1)(iii) of this Section IV, such plan's investment in the pooled fund is subject to the prior written authorization of an authorizing fiduciary who satisfies the requirements of subparagraph (c)(1)(i).

(2) To the extent that Section III(a) of this Part VI prohibits any Morgan Stanley/Mitsubishi Entity or Related Entity from being the employer of employees covered by a plan investing in a pool managed by the Morgan Stanley/Mitsubishi Entity, Section III(a) of this Part VI does not apply if:

(i) The Morgan Stanley/Mitsubishi Entity is an ''investment manager'' as defined in ERISA section 3(38), and

(ii) Either

(A) The Morgan Stanley/Mitsubishi Entity returns or credits to the pooled fund all profits earned by the Related Entity in connection with all covered transactions engaged in by the Related Entity on behalf of the fund, or

(B) The pooled fund satisfies the requirements of Section IV(c)(3) of this Part VI.

(3) A pooled fund satisfies the requirements of this subparagraph for a fiscal year of the fund if:

(i) On the first day of such fiscal year, and immediately following each acquisition of an interest in the pooled fund during the fiscal year by any plan covering employees of any Morgan Stanley/Mitsubishi Entity or Related Entity, the aggregate fair market value of the interests in such fund of all plans covering employees of any Morgan Stanley/Mitsubishi Entity and Related Entity, acquired under this exemption and PTE 86–128, does not exceed 20 percent (20%) of the fair market value of the total assets of the fund; and

(ii) The aggregate brokerage commissions received by any Related Entity, in connection with covered transactions engaged under this exemption and PTE 86–128, on behalf of all pooled funds in which a plan covering employees of any Morgan Stanley/Mitsubishi Entity or Related Entity participates, do not exceed five percent (5%) of the total brokerage commissions received by any Related Entity from all sources in such fiscal year.

Part VII. Proposed Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (Modeled After PTE 2002–12)

Section I. Proposed Exemption for Cross-Trading of Securities by Index and/or Model-Driven Funds

The restrictions of ERISA sections 406(a)(1)(A) and 406(b)(2), and the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1)(A), shall not apply to the transactions described below, if the

applicable conditions set forth in Sections II and III of this exemption, below, are satisfied.

(a) The purchase and sale of securities between an Index Fund or a Model-Driven Fund, as defined in Section IV(a) and (b), below, and another Index Fund or Model-Driven Fund (hereinafter, either referred as a Fund), at least one of which holds ''plan assets'' subject to the Act; or

(b) The purchase and sale of securities between a Fund and a Large Account, as defined in Section IV(e) of this Part VII, at least one of which holds ''plan assets'' subject to the Act, pursuant to a portfolio restructuring program, as defined in Section IV(f) of this Part VII, of the Large Account, where a Morgan Stanley entity is the Manager on one side of the cross-trade and a Mitsubishi entity is the Manager on the other side of the cross-trade. Each Manager must comply with each condition below and is deemed a Morgan Stanley/Mitsubishi Entity for purposes of Parts VIII and IX below.

Notwithstanding the foregoing, this Part VII shall apply to cross-trades between two (2) or more Large Accounts pursuant to a portfolio restructuring program, if such cross-trades occur as part of a single cross-trading program involving both Funds and Large Accounts for which securities are cross-traded solely because of the objective operation of the program.

Section II. Specific Conditions

(a) The cross-trade is executed at the closing price, as defined below in Section IV(h) of this Part VII.

(b) Any cross-trade of securities by a Fund occurs as a direct result of a ''triggering event,'' as defined in Section IV(d), and is executed no later than the close of the third business day following such ''triggering event.''

(c) If the cross-trade involves a Model-Driven Fund, the cross-trade does not take place within three (3) business days following any change made by the Manager to the model underlying the Fund.

(d) The Manager has allocated the opportunity for all Funds or Large Accounts to engage in the cross-trade on an objective basis which has been previously disclosed to the authorizing fiduciaries of plan investors, and which does not permit the exercise of discretion by the Manager (*e.g.,* a pro rata allocation system).

(e) No more than 20 percent (20%) of the assets of the Fund or Large Account at the time of the cross-trade is comprised of assets of plans maintained by the Manager for its own employees (the Manager Plan(s)) for which the Manager exercises investment discretion.

(f)(1) Cross-trades of equity securities involve only securities that are widely held, actively traded, and for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or to the general public, and are widely recognized as accurate and reliable sources for such information. For purposes of this requirement, the terms, ''widely-held'' and ''actively-traded,'' shall be deemed to include any security listed in an Index, as defined in Section IV(c); and

(2) Cross-trades of fixed-income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or to the general public and are widely recognized as accurate and reliable sources for such information.

(g) The Manager receives no brokerage fees or commissions because of the cross-trade.

(h) A plan's participation in the cross-trading program of a Manager, as a result of investments made in any Index or Model-Driven Fund that holds plan assets is subject to a written authorization executed in advance of such investment by a fiduciary of such plan that is independent of Morgan Stanley and Mitsubishi (the independent plan fiduciary).

For purposes of this Part VII, the requirement that the authorizing fiduciary be independent of the Manager shall not apply in the case of a Manager Plan.

(i) With respect to existing plan investors in any Index or Model-Driven Fund that holds plan assets as of the date this proposed exemption is granted, the independent fiduciary is furnished with a written notice, not less than forty-five (45) days before the implementation of the cross-trading program, that describes the Fund's participation in the cross-trading program of the Manager, provided that:

(1) Such notice allows each plan an opportunity to object to such plan's participation in the cross-trading program as a Fund investor by providing such plan with a special termination form;

(2) The notice instructs the independent plan fiduciary that failure to return the termination form to the Manager, by a specified date (which shall be at least thirty (30) days following such plan's receipt of the form) shall be deemed to be an approval by such plan of its participation in the Manager's cross-trading program as a Fund investor; and

(3) If the independent plan fiduciary objects to a plan's participation in the cross-trading program as a Fund investor by returning the termination form to the Manager by the specified date, such plan is given the opportunity to withdraw from each Index or Model-Driven Fund without penalty before the implementation of the cross-trading program, within such time as may be reasonably necessary to effectuate the withdrawal in an orderly manner.

(j) Prior to obtaining the authorization described in Section II(h) the notice described in Section II(i) of this Part VII, the following statement must be provided by the Manager to the independent plan fiduciary:

Investment decisions for the Fund (including decisions regarding which securities to buy or sell, how much of a security to buy or sell, and when to execute a sale or purchase of securities for the Fund) will not be based in whole or in part by the Manager on the availability of cross-trade opportunities and will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon a ''triggering event'' as set forth in this Part VII. Records documenting each cross-trade transaction will be retained by the Manager.

(k) Before any authorization set forth in Section II(h) of this Part VII, and at the time of any notice described in Section II(i) of this Part VII, the independent plan fiduciary must be furnished with any reasonably available information necessary for the fiduciary to determine whether the authorization should be given, including (but not limited to) (i) a copy of this proposed exemption and the final exemption, if granted, (ii) an explanation of how the authorization may be terminated, (iii) detailed disclosure of the procedures to be implemented under the Manager's cross-trading practices (including the ''triggering events'' that will create the cross-trading opportunities, the independent pricing services that will be used by the Manager to price the cross-traded securities, and the methods that will be used for determining closing price), and (iv) any other reasonably available information regarding the matter that the authorizing plan fiduciary requests. The independent plan fiduciary must also be provided with a statement that the Manager will have a potentially conflicting division of

loyalties and responsibilities to the parties to any cross-trade transaction and must explain how the Manager's cross-trading practices and procedures will mitigate such conflicts.

With respect to Funds that are added to the Manager's cross-trading program or changes to, or additions of, triggering events regarding Funds, following the authorizations described in Section II(h) or Section II(i) of this Part VII, the Manager shall provide a notice to each relevant independent plan fiduciary of each plan invested in the affected Funds before, or within ten (10) days following, such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that such plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

(l) At least annually, the Manager notifies the independent fiduciary for each plan that has previously authorized participation in the Manager's cross-trading program as a Fund investor, that such plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund that holds plan assets without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner. This notice shall also provide each independent plan fiduciary with a special termination form and instruct the fiduciary that failure to return the form to the Manager by a specified date (which shall be at least thirty (30) days following such plan's receipt of the form) shall be deemed an approval of the subject plan's continued participation in the cross-trading program as a Fund investor. In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate a plan's participation in the cross-trading program; provided that in such case the notification explicitly discloses that a termination form may be obtained from the Manager upon request. Such annual re-authorization must provide information to the relevant independent plan fiduciary regarding each Fund in which a plan is invested, as well as explicit notification that such plan fiduciary may request and obtain disclosures regarding any new Funds in which such plan is not invested that are added to the cross-trading program, or any new triggering events (as defined in Section IV(d) of this Part VII) that may have been added to any existing Funds in which such plan is not invested, since the time of the initial authorization described in Section II(h) of this Part VII, or the time of the notification described in Section II(i) of this Part VII.

(m) With respect to a cross-trade involving a Large Account:

(1) The cross-trade is executed in connection with a portfolio restructuring program, as defined in Section IV(f) of this Part VII, with respect to all or a portion of the Large Account's investments which an independent fiduciary of the Large Account (other than in the case of any assets of a Manager Plan) has authorized the Manager to carry out or to act as a ''trading adviser,'' as defined in Section IV(g) of this Part VII, in carrying out a Large Account-initiated liquidation or restructuring of its portfolio;

(2) Before the cross-trade, a fiduciary of the Large Account who is independent of Morgan Stanley and Mitsubishi (other than in the case of any assets of a Manager Plan) [7] has been fully informed of the Manager's cross-trading program, has been provided with the information required in Section II(k) of this Part VII, and has provided the Manager with advance written authorization to engage in cross-trading in connection with the restructuring, provided that:

(i) Such authorization may be terminated at will by the Large Account upon receipt by the Manager of written notice of termination.

(ii) A form expressly providing an election to terminate the authorization, with instructions on the use of the form, is supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must specify that the authorization may be terminated at will by the Large Account, without penalty to the Large Account, upon receipt by the Manager of written notice from the authorizing Large Account fiduciary;

(3) All cross-trades made in connection with the portfolio restructuring program must be completed by the Manager within sixty (60) days of the initial authorization (or initial receipt of assets associated with the restructuring, if later) to engage in such restructuring by the Large Account's independent fiduciary, unless such fiduciary agrees in writing to extend this period for another thirty (30) days; and,

(4) No later than thirty (30) days after completion of the Large Account's portfolio restructuring program, the Large Account's independent fiduciary must be fully apprised in writing of all cross-trades executed in connection with the restructuring. Such writing shall include a notice that the Large Account's independent fiduciary may obtain, upon request, the information described in Section III(a) of this Part VII, subject to the limitations described in Section III(b) of this Part VII. However, if the program takes longer than sixty (60) days to complete, interim reports containing the transaction results must be provided to the Large Account fiduciary no later than fifteen (15) days following the end of the initial sixty (60) day period and the succeeding thirty (30) day period.

Section III. General Conditions

(a) The Manager maintains or causes to be maintained for a period of six (6) years from the date of each cross-trade the records necessary to enable the persons described below in subparagraph (b) of this Section III to determine whether the conditions of this Part VII have been met, including records which identify:

(1) On a Fund-by-Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund-by-Fund basis, the model prescribed output or trade list which describes:

(i) Which securities to buy or sell; and

(ii) How much of each security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund-by-Fund basis, the actual trades executed by the Fund on a particular day and which of those trades resulted from triggering events.

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified below in subparagraph (b) of this Section III, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Manager shall be subject

[7] However, for the Manager Plan to participate in a specific portfolio restructuring program as part of a Large Account, proper disclosures must be made to, and written authorization must be made by, an appropriate plan fiduciary.

to the civil penalty that may be assessed under ERISA section 502(i) or to the taxes imposed by Code section 4975(a) and (b) if the records are not maintained or are not available for examination as required by subparagraph (b)below of this Section III.

(b)(1) Except as provided below in subparagraph (b)(2) of this Section III and notwithstanding any provisions of ERISA sections 504(a)(2) and (b), the records referred to in subparagraph (a) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the IRS,

(ii) Any fiduciary of a plan participating in a cross-trading program who has the authority to acquire or dispose of the assets of such plan, or any duly authorized employee or representative of such fiduciary,

(iii) Any contributing employer with respect to any plan participating in a cross-trading program or any duly authorized employee or representative of such employer, and

(iv) Any participant or beneficiary of any Manager Plan participating in a cross-trading program, or any duly authorized employee or representative of such participant or beneficiary.

(2) If, in the course of seeking to inspect records maintained by a Manager pursuant to this Section III, any person described below in subparagraph (b)(1)(ii) through (iv) of this Section III seeks to examine trade secrets, or commercial or financial information of the Manager that is privileged or confidential, and the Manager is otherwise permitted by law to withhold such information from such person, the Manager may refuse to disclose such information provided that, by the close of the thirtieth (30th) day following the request, the Manager gives a written notice to such person advising the person of the reasons for the refusal and that the Department of Labor may request such information.

(3) The information required to be disclosed to persons described above in subparagraph (b)(1)(ii) through (iv) of this Section III shall be limited to information that pertains to cross-trades involving a Fund or Large Account in which they have an interest.

Section IV. Definitions

The following definitions apply for purposes of this Part VII:

(a) ''Index Fund''—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a Manager or an Affiliate, in which one or more investors invest, and:

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index, as defined in Section IV(c) of this Part VII, by either

(i) Replicating the same combination of securities which compose such Index, or

(ii) Sampling the securities which compose such Index based on objective criteria and data;

(2) For which the Manager does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That either contains ''plan assets'' subject to ERISA, is an investment company registered under the 1940 Act, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust, or other fund which is exempt from taxation under Code section 501(a); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Index Fund which is intended to benefit a Manager or an Affiliate, or any party in which a Manager or an Affiliate may have an interest.

(b) ''Model-Driven Fund''—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by the Manager or an Affiliate in which one or more investors invest, and:

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third-party data, not within the control of the Manager, to transform an Index, as defined in Section IV(c) of this Part VII;

(2) Which either contains ''plan assets'' subject to ERISA, is an investment company registered under the 1940 Act, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust, or other fund which is exempt from taxation under Code section 501(a); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Model-Driven Fund or the utilization of any specific objective criteria which is intended to benefit a Manager or an Affiliate, or any party in which a Manager or an Affiliate may have an interest.

(c) ''Index''—A securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is:

(i) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(ii) A publisher of financial news or information, or

(iii) A public securities exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of the Manager, as defined in Section IV(i) of this Part VII; and,

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of the Manager.

(d) ''Triggering Event'':

(1) A change in the composition or weighting of the Index underlying a Fund by the independent organization creating and maintaining the Index;

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that:

(i) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund or the Manager has otherwise disclosed in the description of its cross-trading practices, pursuant to Section II(k) of this Part VII, the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given; and

(ii) Investments or withdrawals as a result of the Manager's discretion to invest or withdraw assets of a Manager Plan, other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into

account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(i) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(ii) Stock attributable to dividends on portfolio securities; provided that such material amount has either been identified in advance as a specified amount relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund, or the Manager has otherwise disclosed in the description of its cross-trading practices, pursuant to Section II(k) of this Part VII the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Model-Driven Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each plan having assets held in the Model-Driven Fund, prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Model-Driven Fund; or

(5) A change in the composition or weighting of a portfolio for an Index Fund or a Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the index used by the Fund.

(e) ''Large Account''—Any investment fund, account or portfolio that is not an Index Fund or a Model-Driven Fund sponsored, maintained, trusteed (other than a Fund for which the Manager is a nondiscretionary trustee), or managed by the Manager, which holds assets of either:

(1) An employee benefit plan within the meaning of ERISA section 3(3) that has $50 million or more in total assets (for purposes of this requirement, the assets of one or more employee benefit plans maintained by the same employer, or controlled group of employers, may be aggregated provided that such assets are pooled for investment purposes in a single master trust);

(2) An institutional investor that has total assets in excess of $50 million, such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust, or other fund which is exempt from taxation under Code section 501(a); or

(3) An investment company registered under the 1940 Act (*e.g.,* a mutual fund) other than an investment company advised or sponsored by the Manager; provided that the Manager has been authorized to restructure all or a portion of the portfolio for such Large Account or to act as a ''trading adviser'' (as defined in Section IV(g) of this Part VII in connection with a portfolio restructuring program (as defined in Section IV(f) of this Part VII for the Large Account.

(f) ''Portfolio restructuring program''—Buying and selling the securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund managed by the Manager or by another investment manager, or in order to produce a portfolio of securities the composition of which is designated by a party independent of the Manager, without regard to the requirements of Section IV(a)(3) or (b)(2) of this Part VII, or to carry out a liquidation of a specified portfolio of securities for the Large Account.

(g) ''Trading adviser''—A Morgan Stanley or Mitsubishi entity whose role is limited with respect to a Large Account to the disposition of a securities portfolio in connection with a portfolio restructuring program that is a Large Account-initiated liquidation or restructuring within a stated period of time in order to minimize transaction costs. The Morgan Stanley or Mitsubishi Entity does not have discretionary authority or control with respect to any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions and does not render investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to such transactions.

(h) ''Closing price''—The price for a security on the date of the transaction, as determined by objective procedures disclosed to investors in advance and consistently applied with respect to securities traded in the same market, which procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined.

(i) ''Manager''—A Morgan Stanley entity acting as manager of a Fund or Large Account involved in one side of a cross-trade transaction involving a Mitsubishi entity acting as manager of a Fund or Large Account involved in the other side of the same cross-trade transaction; or a Mitsubishi entity acting as manager of a Fund or Large Account involved in one side of a cross-trade transaction involving a Morgan Stanley entity acting as manager of a Fund or Large Account involved in the other side of the same cross-trade transaction, where the Morgan Stanley entity and the Mitsubishi entity is:

(1) A bank or trust company, or any Affiliate thereof, which is supervised by a state or federal agency; or

(2) An investment adviser or any Affiliate thereof which is registered under the Investment Advisers Act of 1940.

(j) ''Affiliate''—An affiliate of a Manager is:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Manager:

(2) Any officer, director, employee, or relative of such Manager, or partner of any such Manager; or

(3) Any corporation or partnership of which such Manager is an officer, director, partner, or employee.

(k) ''Control''—The power to exercise a controlling influence over the management or policies of a person other than an individual.

(l) ''Relative''—A relative is a person that is defined in ERISA section 3(15) (or a ''member of the family'' as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or sister).

(m) ''Nondiscretionary trustee''—A plan trustee whose powers and duties with respect to any assets of a plan are limited to:

(1) The provision of nondiscretionary trust services to such plan, and

(2) Duties imposed on the trustee by any provision or provisions of ERISA or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this Part VII, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Part VIII. New Global Conditions Applicable to All Transactions Covered by This Exemption

(a) Notwithstanding the requirements above, the applicable Morgan Stanley/Mitsubishi Entity maintain(s) or cause(s) to be maintained for a period of six (6) years from the date of any transaction described herein, such records as are necessary to enable the persons described below in subparagraph (b) to determine whether the conditions of this proposed exemption were met, except that:

(1) If the records necessary to enable the persons described below in subparagraph (b)(1)(i)–(iv) to determine whether the conditions of the proposed exemption have been met are lost or destroyed, due to circumstances beyond the control of the Morgan Stanley/Mitsubishi Entity, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest with respect to a plan which engages in the covered transactions, other than Morgan Stanley and Mitsubishi, shall be subject to the civil penalty that may be assessed under ERISA section 502(i) Act or to the taxes imposed by Code section 4975(a) and (b) if the records have not been maintained or are not available for examination as required by subparagraph (b) below.

(b)(1) Except as provided below in subparagraph (b)(2), and notwithstanding the provisions of subsections (a)(2) and (b) of ERISA section 504, the records referred to above in subparagraph (a) are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service (IRS), or the SEC; or

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by any plan that engages in the transactions covered herein, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of any plan that engages in the transactions covered herein, or duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in subparagraph (b)(1)(ii)–(iv) shall be authorized to examine the trade secrets of a Morgan Stanley/Mitsubishi Entity, or commercial or financial information, which is privileged or confidential; and

(3) Should a Morgan Stanley/Mitsubishi entity refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to subparagraph (b)(2) above such Morgan Stanley/Mitsubishi Entity shall, by the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

(c) If an Applicable Class Exemption is amended, revised or revoked, or is subject to a new interpretation by the Department following the grant of this exemption, such change or interpretation will apply to the relevant transactions, conditions and/or terms in the relevant exemption herein.

(d) *Disclosure of Conflicts:* The Morgan Stanley/Mitsubishi Entity engaging in a transaction covered by any Part of this exemption (with the exception of transactions described in Parts III and V) must provide a written notice to a fiduciary of that plan that is independent of both Mitsubishi and Morgan Stanley. The notice must clearly, and in plain English: (i) describe the ownership relationship between Morgan Stanley and Mitsubishi; (ii) describe the transactions that Morgan Stanley and Mitsubishi will engage in under this exemption on behalf of the plan or IRA; and (iii) alert the independent plan fiduciary that, as a result of the ownership relationship between Morgan Stanley and Mitsubishi, the previously identified transactions will provide a benefit to Morgan Stanley or Mitsubishi (*i.e.,* the party that is not exercising discretion over the assets involved in the transaction) and/or involve a conflict of interest;

(e) When relying on the relief in any Part of this exemption, the Morgan Stanley/Mitsubishi Entity must comply with the following ''Impartial Conduct Standards'': (1) The Morgan Stanley/Mitsubishi Entity, at the time of the transaction, must act in the Best Interest of the plan. In this regard, acting in the Best Interest means acting with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of affected plan, and not place the financial or other interests of the Morgan Stanley/Mitsubishi Entity, Related Entity, or other party ahead of the interests of the affected plan, or subordinate the plan's interests to their own; (2)(A) The compensation received, directly or indirectly, by the Morgan Stanley/Mitsubishi Entity and Related Entities for their services may not exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and (B) As required by the federal securities laws, the Morgan Stanley/Mitsubishi Entity must obtain the best execution of the investment transaction reasonably available under the circumstances; and (3) The Morgan Stanley/Mitsubishi Entity's statements to the plan about the covered transaction and other relevant matters must not be materially misleading at the time statements are made.

(f) All Morgan Stanley/Mitsubishi Entities utilizing the exemption will have policies and procedures in place that are prudently designed to ensure that the conditions of the exemption are met. The policies and procedures must be in place prior to the occurrence of the transaction that is the subject of the relevant relief.

Part IX. General Definitions

(a) The term ''Morgan Stanley/Mitsubishi Entity'' means an entity acting as a plan fiduciary in a transaction described in Parts I through VII:

(1) That meets the definition of Morgan Stanley, as defined below; or

(2) That meets the definition of Mitsubishi, as defined below; or

(b) The term ''Related Entity'' means an entity that meets the definition of ''Morgan Stanley/Mitsubishi Entity,'' except that the entity is not acting as a fiduciary with respect to the transaction that is the subject of the exemptive relief described in Parts I through VII of the exemption, if granted.

(c) The term ''Morgan Stanley'' means Morgan Stanley & Co. LLC and any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Morgan Stanley & Co.

(d) The term ''Mitsubishi'' means Mitsubishi UFJ Financial Group, Inc., and any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Mitsubishi UFJ Financial Group, Inc.

(e) For purposes of Part IX (c) and (d) above, the term ''control'' means the power to exercise a controlling influence over the management or

policies of a person other than an individual.

(f) The term ''Rating Agency'' or collectively, ''Rating Agencies'' means a credit rating agency that:

(1) Is currently recognized by the Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO);

(2) Has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities;'' and

(3) Has had, within a period not exceeding twelve (12) months prior to the initial issuance of the securities, at least three (3) ''qualified ratings engagements.'' A ''qualified ratings engagement'' is one:

(i) Requested by an issuer or underwriter of securities in connection with the initial offering of the securities;

(ii) For which the credit rating agency is compensated for providing ratings;

(iii) Which is made public to investors generally; and

(iv) Which involves the offering of securities of the type that would be granted relief by the certain underwriter exemptions (the Underwriter Exemptions).[8]

(g) The term ''Applicable Class Exemption'' means PTE 75–1, Part III; PTE 75–1, Part IV; PTE 77–3; PTE 77–4; PTE 79–13; PTE 86–128; or PTE 2002–12.

Applicability Date: This exemption will be in effect on the date that this grant notice is published in the **Federal Register**.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–27082 Filed 12–8–23; 8:45 am]

BILLING CODE 4510–29–P

[8] The Underwriter Exemptions are a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding, and disposition by plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The most recent amendment to the Underwriter Exemptions is the Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency,'' [Prohibited Transaction Exemption 2012–08, 78 FR 41090 (July 9, 2013); Exemption Application No. D–11718].

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Technical Correction to PTE 2016–10, Exemption From Certain Prohibited Transaction Restrictions: Royal Bank of Canada (Together With Its Current and Future Affiliates, RBC or the Applicant)

AGENCY: Employee Benefits Security Administration (EBSA), Labor.

ACTION: Notice of technical correction.

SUMMARY: This document makes a technical correction to Prohibited Transaction Exemption (PTE) 2016–10 granted to the Royal Bank of Canada (D–11868) on October 28, 2016.

DATES:

Issuance date: These technical corrections are issued on December 11, 2023 without further action or notice.

Exemption Date: PTE 2016–10 will remain in effect for the period beginning on the Conviction Date (as corrected herein) until the earlier of: (1) the date that is twelve months following the Conviction Date; or (2) the effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described in PTE 2016–10.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2016, the Department published PTE 2016–10 in the **Federal Register**.[1] PTE 2016–10 is a temporary administrative exemption that permits certain entities (the RBC Qualified Professional Asset Managers (QPAMs)) with specified relationships to Royal Bank of Canada (Bahamas) Limited (RBCTC Bahamas) to continue to rely upon the relief provided by the Department's QPAM Exemption [2] for a one-year period, notwithstanding a potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud.[3]

The Department granted PTE 2016–10 to protect Covered Plans [4] from the harm that may arise if and when RBCTC were convicted in the District Court of Paris.[5] Therefore, PTE 2016–10, as initially granted, defined the term ''Conviction'' as ''the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12.''

In January 2017, the trial court in France acquitted RBCTC of the aiding and abetting the tax fraud charge, so the exemptive relief provided in PTE 2016–01 was unnecessary. However, RBCTC recently informed the Department that the French prosecutor has appealed the lower court's acquittal and the case is now being heard de novo as a new trial by a French appellate court. According to RBCTC, the alleged crime, the parties, and the case numbers remain the same as the District Court of Paris case that is defined as the ''Conviction'' in PTE 2016–01. RBCTC has requested confirmation from the Department that the relief provided in PTE 2016–10 would be available for one year, if RBCTC were ultimately convicted by the French appellate court.

As noted above, PTE 2016–10 is intended to protect Covered Plans from harm if RBCTC were convicted for the alleged crime in France. This same harm would arise whether RBCTC is convicted for the same crime, stemming from the same conduct, in a French appellate court or ''the District Court of Paris.'' Therefore, to ensure that Covered Plans are protected from any harm that would arise from the appellate court's conviction of RBCTC, the Department is revising the definition of ''Conviction'' in PTE 2016–10 to refer to ''the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the Court of Appeal, French

[1] 81 FR 75147 (October 28, 2016).

[2] PTE 84–14 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84–14 or the QPAM exemption.

[3] Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84–14 for itself and its client plans, if that entity or an ''affiliate'' thereof, or any owner, direct or indirect, of a five percent or more interest in the QPAM has within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section.

[4] A ''Covered Plan'' is a plan subject to part 4 of title 1 of ERISA (''ERISA-covered plan'') or a plan subject to Section 4975 of the Code (''IRA''), with respect to which an RBC QPAM relies on PTE 84–14, or with respect to which an RBC QPAM (or any RBC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption. A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the RBC QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

[5] RBC's exemption request (D–11868) is available by contacting EBSA's Public Disclosure Room at (202) 693–8673.

Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 or another court of competent jurisdiction.''

RBC represents to the Department that to the best of RBC's knowledge, there have been no material changes since September 2, 2015, the date of RBC's application for PTE 2016–10, that are relevant to that application or the technical corrections set forth herein, other than changes in RBC's number of clients and assets under management RBC makes these representations with the caveat that, as a large global financial institution, it has been subject to a variety of legal proceedings, including civil claims and lawsuits, regulatory examinations, investigations, audits, and requests for information. To the best of its knowledge at this time, however, RBC does not believe that the outcome of any current investigation or other such proceeding would cause the exemption to be unavailable. Moreover, no affiliate of RBC has been convicted of any crime described in section I(g) of the QPAM Exemption and, to the best of RBC's knowledge, neither RBC nor any affiliate has entered into a deferred prosecution or non-prosecution agreement since September 2, 2015.

The Department notes that it is making this technical correction based upon RBC's certified representation that since September 2, 2015: (1) there have in fact been no material changes other than those changes noted above; (2) no affiliate of RBC has been convicted of any crime described in section I(g) of the QPAM Exemption, other than the conviction covered under PTE 2016–10; and (3) neither RBC nor any affiliate of RBC has entered into a deferred prosecution or non-prosecution agreement. If, at any time, RBC discovers any of these representations is no longer true, RBC must immediately contact the Department and submit a written statement that provides the Department with the complete details on the circumstances discovered.

The Department is not taking a position regarding whether the outcome of any proceedings will cause the exemption to be unavailable and also notes that the availability of PTE 2016–10 is conditioned upon RBC's compliance with all of the conditions included therein, including the condition that expressly states: ''During the effective period of this temporary exemption, RBC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that RBC or an affiliate enters into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA.'' As noted in the preceding paragraph, if RBC discovers that RBC or any RBC affiliate has entered into a DPA or NPA at any time since September 2, 2015, RBC must inform the Department promptly upon RBC or its affiliates' discovery of such fact.

Technical Correction

Section II(a) of PTE 2016–10 is amended to read as follows:

''(a) The term ''Conviction'' means the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 or another court of competent jurisdiction''

Signed at Washington, DC, this 5th day of December 2023.

George Christopher Cosby,

Director, Office of Exemption Determinations Employee Benefits Security Administration U.S. Department of Labor.

[FR Doc. 2023–27084 Filed 12–8–23; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440–LR; ASLBP No. 24–982–01–LR–BD01]

Establishment of Atomic Safety and Licensing Board (Amended);[1] Energy Harbor Nuclear Corp.

Pursuant to the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Energy Harbor Nuclear Corp. (Perry Nuclear Power Plant, Unit 1)

This proceeding involves an application seeking a twenty-year license renewal of Facility Operating License NPF–58 to authorize Energy Harbor Nuclear Corp. to operate Perry Nuclear Power Plant, Unit 1 until November 7, 2046. In response to a notice published in the **Federal Register** announcing the opportunity to request a hearing, *see* 88 FR 67373 (Sept. 29, 2023), a hearing request was filed on November 28, 2023, on behalf of Ohio Nuclear-Free Network and Beyond Nuclear.

[1] This Board Establishment Notice amends the December 4, 2023 Board Establishment Notice to correct the spelling of Judge Nicholas G. Trikouros' name.

The Board is comprised of the following Administrative Judges:

Michael M. Gibson, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Nicholas G. Trikouros, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: December 5, 2023.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2023–27041 Filed 12–8–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0072]

Information Collection: Grants and Cooperative Agreement Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Grants and Cooperative Agreement Provisions.''

DATES: Submit comments by January 10, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0072 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–2023–0072.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Grants and Cooperative Agreement Provisions.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on September 7, 2023, 88 FR 61625.

1. *The title of the information collection:* Grants and Cooperative Agreement Provisions.
2. *OMB approval number:* 3150–0107.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Forms 972 and 975.
5. *How often the collection is required or requested:* Technical Performance reports are required every 6 months; other information is submitted on occasion as needed.
6. *Who will be required or asked to respond:* Grants and Cooperative Agreement recipients.
7. *The estimated number of annual responses:* 619.
8. *The estimated number of annual respondents:* 235.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 3,346.5 (3,082 reporting + 264.5 recordkeeping).
10. *Abstract:* The Acquisition Management Division is responsible for the awarding grants and cooperative agreement provisions in order to administer the NRC's financial assistance program. The information collected under the provisions ensures that the Government's rights are protected, the agency adheres to public laws, the work proceeds on schedule, and that disputes between the Government and recipient are settled.

III. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	ADAMS Accession No.
Final Supporting Statement for Grants and Cooperative Agreement Provisions	ML23312A037.
Burden spreadsheet for Grants and Cooperative Agreements	ML23158A097.
The NRC's Standard Terms and Conditions for U.S. Nongovernmental Recipients	ML23158A093.
Educational Performance Progress Report Guidance	ML21364A044.
Research Performance Progress Report Guidance	ML21364A048.
NRC Form 972, NRC University Nuclear Leadership Program (UNLP) Service Agreement for Grant Fellowships, and Scholarships to Colleges, Universities and Trade/Community Colleges.	ML23192A011.
NRC Form 975, NRC Minority Serving Institutions Grants Program (MSIGP) Service Agreement for Grant Fellowships, and Scholarships to Colleges, Universities and Trade/Community Colleges.	ML23156A250.

Dated: December 6, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–27106 Filed 12–8–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–96 and CP2024–98; MC2024–97 and CP2024–99]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 13, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–96 and CP2024–98; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 28 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 5, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 13, 2023.

2. *Docket No(s).:* MC2024–95 and CP2024–97; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 29 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 5, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 13, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–27135 Filed 12–8–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket No. C2023–6; Presiding Officer's Ruling No. 3]

Service Standard Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is providing notice that a hearing format and procedural schedule have been established in this proceeding. This notice informs the public of the hearing format and procedural schedule.

DATES: *Complainant's Initial Brief and Supporting Evidence are due:* January 3, 2024; *Postal Service's Deadline to Request Written Cross-Examination of Complainant's Witnesses:* January 5, 2024; *Complainant's Response to Written Cross-Examination, if necessary, is due:* January 12, 2024; *Postal Service's Answering Brief and Supporting Evidence are due:* January 25, 2024; *Complainant's Deadline to Request Written Cross-Examination of Postal Service's Witnesses:* January 29, 2024; *Postal Service's Response to Written Cross-Examination, if necessary, is due:* February 5, 2024; *Complainant's Reply Brief and Supporting Evidence is due:* February 12, 2024; *Postal Service's Deadline to Request Written Cross-Examination of Complainant's Reply Witnesses:* February 14, 2024; *Complainant's Response to Written Cross-Examination, if necessary, is due:* February 21, 2024.

ADDRESSES: Submit notices of intervention electronically via the Commission's Filing Online system at *https://www.prc.gov.* Persons interested in intervening who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820. For additional information, Presiding Officer's Ruling No. 3 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Hearing Format

Pursuant to the discussion at the December 4, 2023 prehearing videoconference, the parties agree that the hearing should be conducted by written submission of material only. *See* 39 CFR 3010.303(a). The parties reserve the right to request oral cross-

examination of witnesses by motion. *See* 39 CFR 3010.303(b). The Presiding Officer may also request oral testimony or cross-examination on his own motion. *Id.*

To promote the efficient resolution of the remaining issues, the parties will file briefs and supporting evidence at the same time. The parties' briefs shall address each of the two remaining disputed issues of fact identified by the Commission and explain how the evidence presented supports or does not support the three elements of a claim of undue or unreasonable discrimination under 39 U.S.C. 403(c).[1] The briefs should also comply with the relevant requirements of 39 CFR 3010.330(b) to the extent practicable and include proposed findings of fact and conclusions of law.

Complainant's initial brief and the Postal Service's answering brief may not exceed 20 pages. Complainant's reply brief may not exceed 10 pages. Cover pages, tables of contents, tables of authorities, signature blocks, addenda containing statutes, rules or regulations, and exhibits are excluded from the page limits. Motions to exceed the applicable length limitations will be granted only for compelling reasons.

II. Hearing Schedule

The schedule for the submission of briefs and evidence shall be as follows:

Complainant's Initial Brief and Supporting Evidence—January 3, 2024
Postal Service's Deadline to Request Written Cross-Examination of Complainant's Witnesses—January 5, 2024
Complainant's Response to Written Cross-Examination, if necessary—January 12, 2024
Postal Service's Answering Brief and Supporting Evidence—January 25, 2024
Complainant's Deadline to Request Written Cross-Examination of Postal Service's Witnesses—January 29, 2024
Postal Service's Response to Written Cross-Examination, if necessary—February 5, 2024
Complainant's Reply Brief and Supporting Evidence—February 12, 2024
Postal Service's Deadline to Request Written Cross-Examination of Complainant's Reply Witnesses—February 14, 2024
Complainant's Response to Written Cross-Examination, if necessary—February 21, 2024

All submissions must be filed electronically on the Commission's docket by 4:30 p.m. Eastern time on the date due. If either party seeks an extension of a filing deadline, that party must make a good faith effort to contact the opposing party to find a mutually agreeable new date before filing a motion for extension of time. This good faith effort requires the moving party to place at least one telephone call or send one email message to the opposing party. Any motion for extension of time must state whether the opposing party consents to the requested extension.

Any motion by a party requesting oral cross-examination of any witness, or to make any other change to the hearing format, must be filed no later than February 16, 2024, if the Postal Service does not request written cross-examination of any of Complainant's reply witnesses, or February 26, 2024, if the Postal Service does request written cross-examination of any of Complainant's reply witnesses. A motion requesting oral cross-examination must identify the witness statement(s) at issue, explain why oral cross-examination is necessary to clarify the witness' response to written cross-examination, and state what additional information or clarification may be adduced through oral cross-examination that would be helpful to resolve this case. *See* 39 CFR 3030.321(g)(5)(i). If permitted, oral cross-examination will be limited to matters within the scope of the written cross-examination. A party may not seek new information through oral cross-examination that could have been obtained through the initial written cross-examination.

III. Ruling

1. The parties and counsel shall follow the hearing format and schedule established by this Presiding Officer's Ruling.

2. The Secretary shall arrange for publication of the hearing schedule in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–27137 Filed 12–8–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Order Partially Denying United States Postal Service's Motion to Dismiss and Notice of Limited Formal Proceedings, September 18, 2023, at 7–8 (Order No. 6688).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–94 and CP2024–96; MC2024–95 and CP2024–97]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 12, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–94 and CP2024–96; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 129 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 4, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 12, 2023.

2. *Docket No(s).:* MC2024–95 and CP2024–97; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 130 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 4, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 12, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–27087 Filed 12–8–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Notice of Availability of Updated Record of Decision for Next Generation Delivery Vehicles Acquisitions

To replace existing delivery vehicles nationwide that have reached the end of their service life, the U.S. Postal Service has determined that it will implement the Preferred Alternative set forth in its September 29, 2023, Final Supplemental Environmental Impact Statement (SEIS). The Preferred Alternative is the purchase and deployment of a mixed fleet of Commercial Off-the-Shelf and Next Generation Delivery Vehicles. Of the total quantity of 106,480 vehicles to be procured under this SEIS, 62 percent would have battery electric powertrains.

This Updated Record of Decision (Updated ROD) supersedes the Record of Decision issued on February 23, 2022, and became effective when it was signed by the Postal Service's Senior Vice President for Facilities and Fleet Management on December 5, 2023.

Interested parties may view the Updated ROD, Final SEIS and all prior NEPA documents related to this procurement at *http://uspsngdveis.com/.*

References

1. U.S. Postal Service, Notice of Availability of Record of Decision, Next Generation Delivery Vehicles Acquisitions (87 FR 14588; Mar. 15, 2022).
2. U.S. Postal Service, Notice of Intent to Prepare a Supplement to the Next Generation Delivery Vehicles Acquisitions Final Environmental Impact Statement (87 FR 35581; June 10, 2022).
3. U.S. Postal Service, Notice to Postpone Public Hearing and Extend Public Comment Period for Supplement to the Next Generation Delivery Vehicles Acquisitions Final Environmental Impact Statement (87 FR 43561; July 21, 2022).
4. U.S. Postal Service, Notice of Availability of Draft Supplemental Environmental Impact Statement for Next Generation Delivery Vehicles Acquisitions (88 FR 125; June 30, 2023).
5. U.S. Postal Service, Notice of Availability of Final Supplemental Environmental Impact Statement for Next Generation Delivery Vehicles Acquisitions (88 FR 67378; September 29, 2023.
6. U.S. Environmental Protection Agency, Notice of Availability of EIS No. 20230129, Final Supplement, USPS, DC, Next Generation Delivery Vehicle Acquisitions (88 FR 67277; September 29, 2023).

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–27098 Filed 12–8–23; 8:45 am]

BILLING CODE 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:* December 11, 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 November 28, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 120 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–80, CP2024–82.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–27205 Filed 12–7–23; 1:00 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 13, 2023 at 10:00 a.m. (ET).

PLACE: The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street, NE, Washington, DC 20549 and will be simultaneously webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt amendments to the standards applicable to covered clearing agencies for U.S. Treasury securities regarding their membership requirements and risk management and whether to adopt amendments to the broker-dealer customer protection rule regarding margin held at covered clearing agencies for U.S. Treasury securities.

2. The Commission will consider whether to approve the 2024 Final Budget and Accounting Support Fee for the Public Company Accounting Oversight Board

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact

Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: December 6, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–27174 Filed 12–7–23; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–556, OMB Control No. 3235–0619]

Submission for OMB Review; Comment Request; Extension: Rule 163

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 163 (17 CFR 230.163) provides an exemption from section 5(c) (15 U.S.C. 77e(c)) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain communications by or on behalf of a well-known seasoned issuer. The information filed under Rule 163 is publicly available. We estimate that it takes approximately 0.375 burden hours per response to provide the information required under Rule 163 and is filed by approximately 12 issuers. We estimate that 25% of the 0.375 hours per response (0.09375 hours) is prepared by the issuer for an annual reporting burden of 1 hours (0.09375 hours per response × 12 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by January 10, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27147 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–462, OMB Control No. 3235–0521]

Submission for OMB Review; Comment Request; Extension: Rule 425

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more-timely basis, so long as the written communications are filed on the date of first use. The information provided under Rule 425 is made available to the public upon request. Also, the information provided under Rule 425 is mandatory. Approximately 7,160 issuers file communications under Rule 425 at an estimated 0.25 hours per response for a total of 1,790 annual burden hours (0.25 hours per response × 7,160 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by January 10, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27148 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–557, OMB Control No. 3235–0618]

Submission for OMB Review; Comment Request; Extension: Rule 173

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Securities Act Rule 173 (17 CFR 230.173) provides a notice of registration to investors who purchased securities in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). A Rule 173 notice must be provided by each underwriter or dealer to each investor who purchased securities from the underwriter or dealer. The Rule 173 notice is not publicly available. We estimate that it takes approximately 0.0167 hour per response to provide the information required under Rule 173 and that the information is filed by approximately 5,720 respondents approximately 43,546 times a year for a total of 249,083,120 responses. We estimate that the total annual reporting burden for Rule 173 is 4,159,688 hours (0.0167 hours per response × 249,083,120 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by January 10, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27146 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–457, OMB Control No. 3235–0518]

Submission for OMB Review; Comment Request; Extension: Form CB, Tender Offer/Rights Offering Notification Form

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form CB (17 CFR 239.800) is a document filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) (17 CFR 240.13e–4(h)(8)), a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c) (17 CFR 240.14d–1(c)) and a going private transaction conducted in accordance with Rule 13e–3(g)(6) (17 CFR 240.13e–3(g)(6)). Form CB is also used by a subject company pursuant to Exchange Act Rule 14e–2(d) (17 CFR 240.14e–2(d)). This information is made available to the public. Information provided on Form CB is mandatory. Form CB takes approximately 0.5 hours per response to prepare and is filed by approximately 58 respondents annually. We estimate that 25% of the 0.5 hours per response (0.125 hours) is prepared by the respondent for an annual reporting burden of 7 hours (0.125 hours per response × 58 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by January 10, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27144 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99087; File No. SR–NYSEAMER–2023–63]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

December 5, 2023.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 27, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule'') regarding the Firm Monthly Fee Cap. The Exchange proposes to implement the fee change effective November 27, 2023.[4] 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 and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify the Firm Monthly Fee Cap. The Exchange proposes to implement the rule change on November 15, 2023.

The Firm Monthly Fee Cap is set forth in Section I.I. of the Fee Schedule.[5] Currently, a Firm's fees associated with Manual transactions are capped at $200,000 per month per Firm.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on October 31, 2023 (SR–NYSEAMER–2023–55), then withdrew such filing and amended the Fee Schedule on November 15, 2023 (SR–NYSEAMER–2023–60), which latter filing the Exchange withdrew on November 27, 2023.

[5] *See* Fee Schedule, Section I.I., Firm Monthly Fee Cap, *available at: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[6] The Exchange also proposes two clarifying changes to the description of the Firm Monthly Fee Cap. First, the Exchange proposes to add text to specify that fees for QCC transactions are included in the Manual transaction fees eligible to be capped.

The Exchange proposes to raise the Firm Monthly Fee Cap to $250,000 per month per Firm. To effect this change, the Exchange proposes to modify Section I.I. to replace references to a $200,000 cap with references to a $250,000 cap.[7] Once a Firm has reached the Firm Monthly Fee Cap, an incremental service fee of $0.02 per contract for Firm Manual transactions will apply, including for the execution of a QCC order. Royalty Fees and fees or volumes associated with Strategy Executions will continue to be excluded from the calculation of fees towards the Firm Monthly Fee Cap. Firm Facilitation Manual trades will also continue to be executed at the rate of $0.00 per contract regardless of whether a Firm has reached the Firm Monthly Fee Cap.

The Exchange believes that the proposed change, despite increasing the amount of the Firm Monthly Fee Cap, would continue to incent Firms to direct order flow to the Exchange to receive the benefits of a fee cap on Manual transaction fees (including fees for QCC transactions).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance 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.'' [10]

There are currently 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[11] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in September 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[12]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The proposed increase to the Firm Monthly Fee Cap is reasonable because the Exchange believes the fee cap, although higher, would continue to incent Firms to direct order flow to the Exchange to receive the benefits of capped fees for their Manual transactions (including QCC transactions). The Exchange also believes the proposed change is reasonable because the proposed fee cap amount would be applicable to all Firms. In addition, although the proposed change would raise the amount of the Firm Monthly Fee Cap, it would continue to offer Firms the opportunity to qualify for capped fees on Manual transactions (including QCC transactions), which the Exchange believes provides Firms with a benefit not offered by at least one other options exchange.[13] The Exchange also believes that the proposed clarifying changes are reasonable, as they are intended only to improve the clarity of the Fee Schedule (and are not intended to effect any substantive changes).

To the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as market participants can choose to direct their order flow to any of the 17 options exchanges. The Exchange believes that proposed rule change is designed to continue to incent market participants to direct liquidity and, in particular, Manual (including QCC) transactions, to the Exchange, and, to the extent they continue to be incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for all market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is equitable because the proposal is based on the amount and type of business transacted on the Exchange. The Exchange also believes that the proposed modification of the Firm Monthly Fee Cap is equitable because it would be available to all Firms equally and would continue to provide the same fee cap amount for all Firms. The Exchange also believes that the proposed rule change is equitable with respect to non-Firm market participants because the Firm Monthly Fee Cap would not be as meaningful for Customers and because Market Makers are offered other incentives to reduce

This proposed change is not intended to modify the applicability of the Firm Monthly Fee Cap, but rather to ensure that the Fee Schedule clearly reflects the fees that are eligible for the Firm Monthly Fee Cap. Second, the Exchange proposes to delete the last sentence of the description of the Firm Monthly Fee Cap as extraneous. This proposed change similarly does not impact the applicability of the Firm Monthly Fee Cap and is instead intended to promote clarity in the Fee Schedule.

[7] The Exchange also proposes a conforming change to footnote 4 in Section I.A. (Rates for Options transactions) of the Fee Schedule, which cross-references the Firm Monthly Fee Cap as set forth in Section I.I. The Exchange likewise proposes to modify footnote 4 to replace the reference to a $200,000 cap with a reference to a $250,000 cap.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[11] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[12] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options decreased from 8.66% for the month of September 2022 to 7.31% for the month of September 2023.

[13] *See, e.g.,* BOX Options Fee Schedule, available at: *https://boxoptions.com/fee-schedule/* (no cap on Firm manual transaction fees).

transaction fees.[14] The Exchange believes that the proposed change, although it increases the fee cap amount, would not discourage Firms from directing order flow to the Exchange. To the extent that the proposed change achieves its purpose in continuing to incent Firms to aggregate their executions at the Exchange as a primary execution venue and does not discourage Firms from continuing to direct order flow to the Exchange to achieve the benefits of capped fees, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution, and all market participants would benefit from enhanced opportunities for price improvement and order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the modification of the Firm Monthly Fee Cap is not unfairly discriminatory because the fee cap amount, as proposed, would continue to be applicable to all similarly situated Firms, any of which could continue to be incentivized to direct order flow to the Exchange to qualify for the fee cap. Moreover, the proposed change to the Firm Monthly Fee Cap is not unfairly discriminatory because it would continue to apply the same fee cap amount to all Firms. The Exchange notes that offering the Firm Monthly Fee Cap, as proposed, to Firms but not to other market participants is not unfairly discriminatory because the Firm Monthly Fee Cap would not be as meaningful for Customers and because Market Makers are offered other incentives to reduce transaction fees.[15]

To the extent the proposed change continues to attract Manual (including QCC) transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [16]

Intramarket Competition. The proposed change is designed to continue to attract order flow to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and the Exchange believes that the proposed modification of the Firm Monthly Fee Cap (even though it would raise the amount of the fee cap) would not impose any burden on competition that is not necessary or appropriate because it is intended to continue to incentivize Firms to direct order flow to the Exchange to be eligible for the benefits of capped fees on Manual transactions (including QCC transactions), thereby promoting liquidity on the Exchange to the benefit of all market participants.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[17] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in September 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[18]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent market participants to direct trading interest to the Exchange, to provide liquidity and to attract order flow. To the extent that Firms are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that do not offer a cap on Firm fees,[19] by encouraging additional orders to be sent to the Exchange for execution. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [20] of the Act and

[14] For example, Customers are not subject to a fee for Manual transactions, and the Exchange offers various incentives to Market Makers, including the Market Maker Sliding Scale and Prepayment Program. *See* Fee Schedule at Sections I.A., I.C., and I.D.

[15] *See id.*

[16] *See* Reg NMS Adopting Release, *supra* note 9, at 37499.

[17] *See* note 10, *supra.*

[18] *See* note 11, *supra.*

[19] *See* note 12, *supra.*

[20] 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(2) of Rule 19b–4 [21] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [22] 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–NYSEAMER–2023–63 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–NYSEAMER–2023–63. 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–NYSEAMER–2023–63 and should be submitted on or before January 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27065 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 240.19b–4(f)(2).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99089; File No. SR–EMERALD–2023–29]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Purge Ports

December 5, 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 November 22, 2023, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Emerald Options Exchange Fee Schedule (the ''Fee Schedule'') to amend fees for Purge Ports.[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings,* at MIAX's principal office, 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 is proposing to amend the fees for Purge Ports, which is a function enabling Market Makers [4] to cancel all open quotes or a subset of open quotes through a single cancel message. The Exchange currently provides Market Makers the option to purchase Purge Ports to assist in their quoting activity. Purge Ports provide Market Makers with the ability to send purge messages to the Exchange System.[5] Purge Ports are not capable of sending or receiving any other type of messages or information. The use of Purge Ports is completely optional and no rule or regulation requires that a Market Maker utilize them.

The Exchange initially filed the proposal on September 29, 2023 (EMERALD–2023–26) (the ''Initial Proposal'').[6] On November 22, 2023, the Exchange withdrew the Initial Proposal and replaced it with this filing.

Unlike other options exchanges that charge fees for Purge Ports on a per port basis,[7] the Exchange assesses a flat fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed fee change is based on a recent proposal by Nasdaq Phlx LLC (''Phlx'') to adopt fees for purge ports. *See* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 98734 (October 12, 2023), 88 FR 71894 (October 18, 2023) (SR–EMERALD–2023–26).

[7] *See* Cboe BXZ Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe EDGX Exchange, Inc. (''EDGX'') Options Fee Schedule,

Continued

of $1,500 per month, regardless of the number of Purge Ports utilized by a Market Maker. Currently, a Market Maker may request and be allocated two (2) Purge Ports per Matching Engine [8] to which it connects and not all Market Makers connect to all of the Exchange's Matching Engines.

The Exchange now proposes to amend the fee for Purge Ports to align more closely with other exchanges who charge on a per port basis by providing two (2) Purge Ports per Matching Engine for a monthly flat fee of $600 per month per Matching Engine. The only difference with a per port structure is that Market Makers receive two (2) Purge Ports per Matching Engine for the same proposed monthly fee, rather than being charged a separate fee for each Purge Port. The Exchange proposes to charge the proposed fee for Purge Ports per Matching Engine, instead on a per Purge Port basis, due to its System architecture which provides two (2) Purge Ports per Matching Engine for redundancy purposes. In addition, the proposed fee is lower than the comparable fee charged by competing exchanges that also charge on a per port basis, notwithstanding that the Exchange is providing up to two (2) Purge Ports for that same lower fee.[9]

Similar to a per port charge, Market Makers are able to select the Matching Engines that they want to connect to,[10] based on the business needs of each Market Maker, and pay the applicable fee based on the number of Matching Engines and ports utilized. The Exchange believes that the proposed fee provides Market Makers with flexibility to control their Purge Port costs based on the number of Matching Engines each Marker Maker elects to connect to based on each Market Maker's business needs.

* * * * *

A logical port represents a port established by the Exchange within the Exchange's System for trading and billing purposes. Each logical port grants a Member [11] the ability to accomplish a specific function, such as order entry, order cancellation, access to execution reports, and other administrative information.

Purge Ports are designed to assist Market Makers [12] in the management of, and risk control over, their quotes, particularly if the firm is dealing with a large number of securities. For example, if a Market Maker detects market indications that may influence the execution potential of their quotes, the Market Maker may use Purge Ports to reduce uncertainty and to manage risk by purging all quotes in a number of securities. This allows Market Makers to seamlessly avoid unintended executions, while continuing to evaluate the market, their positions, and their risk levels. Purge Ports are used by Market Makers that conduct business activity that exposes them to a large amount of risk across a number of securities. Purge Ports enable Market Makers to cancel all open quotes, or a subset of open quotes through a single cancel message. The Exchange notes that Purge Ports increase efficiency of already existing functionality enabling the cancellation of quotes.

The Exchange operates highly performant systems with significant throughput and determinism which allows participants to enter, update and cancel quotes at high rates. Market Makers may currently cancel individual quotes through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations.[13] Other than Purge Ports being a dedicated line for cancelling quotations, Purge Ports operate in the same manner as a mass cancel message being sent over a different type of port. For example, like Purge Ports, mass cancellations sent over a logical port may be done at either the firm or MPID level. As a result, Market Makers can currently cancel quotes in rapid succession across their existing logical ports [14] or through a single cancel message, all open quotes or a subset of open quotes.

Similarly, Market Makers may also use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to automatically cancel all quotes, as configured or instructed by the Member or Market Maker.[15] In addition, the Exchange already provides similar ability to mass cancel quotes through the Exchange's risk controls, which are offered at no charge and enables Market Makers to establish pre-determined levels of risk exposure, and can be used to cancel all open quotes.[16] Accordingly, the Exchange believes that the Purge Ports provide an efficient option as an alternative to already available services and enhance the Market Maker's ability to manage their risk.

The Exchange believes that market participants benefit from a dedicated purge mechanism for specific Market Makers and to the market as a whole. Market Makers will have the benefit of efficient risk management and purge tools. The market will benefit from potential increased quoting and liquidity as Market Makers may use Purge Ports to manage their risk more robustly. Only Market Makers that request Purge Ports would be subject to the proposed fees, and other Market Makers can continue to operate in exactly the same manner as they do today without dedicated Purge Ports, but with the additional purging capabilities described above.

Implementation Date

The proposed fees are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[17] in general, and furthers the objectives of section 6(b)(5) of the Act,[18] in particular, in that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed fee is consistent with section 6(b)(4) of the

Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe Exchange, Inc. (''Cboe'') Fee Schedule ($850 per purge port per month). *See also* Nasdaq GEMX, Options 7, Pricing Schedule, Section 6.C.(3). Nasdaq GEMX, LLC (''Nasdaq GEMX'') assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports, applicable to market makers. *See also* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

[8] A Matching Engine is a part of the Exchange's electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

[9] *See supra* note 7.

[10] The Exchange notes that each Matching Engine corresponds to a specified group of symbols. Certain Market Makers choose to only quote in certain symbols while other Market Makers choose to quote the entire market.

[11] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[12] Members seeking to become registered as a Market Maker must comply with the applicable requirements of Chapter VI of the Exchange's Rules.

[13] *See* Exchange Rule 519C(a) and (b).

[14] Current Exchange port functionality supports cancelation rates that exceed one thousand messages per second and the Exchange's research indicates that certain market participants rely on such functionality and at times utilize such cancelation rates.

[15] *See* Exchange Rule 519C (c).

[16] *See* Exchange Rule 532.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

Act [19] because it represents an equitable allocation of reasonable dues, fees and other charges among market participants.

The Exchange supports the proposed fee change with the below justification because a similar justification was used in a recent 2023 proposal filed with the Commission by another national securities exchange, Phlx, to adopt fees for purge ports, which the Commission deemed acceptable by not suspending that filing during the applicable 60-day review period.[20] In fact, the same justification Phlx utilized was also used in similar recent proposals to adopt fees for purge ports by two of Phlx's affiliated exchanges.[21] Therefore, the Exchange utilized the below justification based on this recent Commission precedent from approximately one month ago.

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Market Makers optional service and flexible fee structures which promotes choice, flexibility, efficiency, and competition. The Exchange believes Purge Ports enhance Market Makers' ability to manage quotes, which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that Purge Ports foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating Purge Ports for purge messages may encourage better use of such ports. This may, concurrent with the ports that carry quotes and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. Similar connectivity and functionality is offered by options exchanges, including the Exchange's own affiliated options exchanges, and other equities exchanges.[22] The Exchange believes that proper risk management, including the ability to efficiently cancel multiple quotes quickly when necessary, is similarly valuable to firms that trade in the equities market, including Market Makers that have heightened quoting obligations that are not applicable to other market participants.

Purge Ports do not relieve Market Makers of their quoting obligations or firm quote obligations under Regulation NMS Rule 602.[23] Specifically, any interest that is executable against a Member's or Market Maker's quotes that is received by the Exchange prior to the time of the removal of quotes request will automatically execute. Market Makers that purge their quotes will not be relieved of the obligation to provide continuous two- sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day.[24]

The Exchange is not the only exchange to offer this functionality and to charge associated fees.[25] The Exchange believes the proposed fee for Purge Ports is reasonable because it is lower than the fees currently charged by other exchanges for similar port functionality. For example, BZX and EDGX charge a fee of $750 per purge port per month, Cboe charges $850 per purge port per month, Nasdaq GEMX assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports.[26]

The Exchange believes it is reasonable to charge $600 per month for Purge Ports as proposed because such ports were specially developed to allow Market Makers to send a single message to cancel multiple quotes, thereby assisting firms in effectively managing risk. The Exchange also believes that a Member that chooses to utilize Purge Ports may, in the future, reduce their need for additional ports by consolidating cancel messages to their dedicated Purge Port and thus freeing up some capacity of the existing logical ports and, therefore, allowing for increased message traffic without paying for additional logical ports. Purge Ports provide the ability to cancel multiple quotes with a single message over a dedicated port, and, therefore, may create efficiencies for firms and provide a more efficient solution for them based on their risk management needs. In addition, Purge Port requests may cancel quotes submitted over numerous ports and contain added functionality to purge only a subset of these quotes. Effective risk management is important both for individual market participants that choose to utilize risk features provided by the Exchange, as well as for the market in general. As a result, the Exchange believes that it is appropriate to charge fees for such functionality as doing so aids in the maintenance of a fair and orderly market.

The Exchange also believes that its ability to set fees for Purge Ports is subject to significant substitution-based forces because Market Makers are able to rely on currently available services both free and those they receive when using existing trading protocols. If the value of the efficiency introduced through the Purge Port functionality is not worth the proposed fees, Market Makers will simply continue to rely on the existing functionality and not pay for Purge Ports. In that regard, Market Makers may currently cancel individual quotes through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations. Already Market Makers can also cancel quotes individually and by utilizing Exchange protocols that allow them to develop proprietary systems that can send cancel messages at a high rate.[27] In addition, the Exchange already provides similar ability to mass cancel quotes through the Exchange's risk controls, which are offered at no charge that enables Market Makers to establish pre-determined levels of risk exposure, and can be used to cancel all open quotes.[28]

Further, like Purge Ports, Members may also cancel all or a subset of its orders in the System, by firm name or by MPID, over their existing ports, or by

[19] 15 U.S.C. 78f(b)(4).

[20] *See supra* note 3.

[21] *See* Securities Exchange Act Release Nos. 98770 (October 18, 2023), 88 FR 73065 (October 24, 2023) (SR–BX–2023–026); *and* 98768 (October 18, 2023), 88 FR 73056 (October 24, 2023) (SR–NASDAQ–2023–041). While the Exchange included a cos-based justification in a related filing to amend fees for connectivity, it does not believe a cost-based justification is require here because Purge Ports are optional functionality and no cost-based justification was provided by Phlx or any of its affiliates in their same filings to adopt fees for purge ports. Nor does the Commission Staff's own fee guidance include such a requirement. *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.*

[22] *See supra* notes 3 and 7. *See also* Securities Exchange Act Release No. 77613 (April 13, 2016), 81 FR 23023 (April 19, 2016). *See* also Securities Exchange Act Release Nos. 79956 (February 3, 2017), 82 FR 10102 (February 9, 2017) (SR–BatsBZX–2017–05); 79957 (February 3, 2017), 82 FR 10070 (February 9, 2017) (SR–BatsEDGX–2017–07); 83201 (May 9, 2018), 83 FR 22546 (May 15, 2018) (SR–C2–2018–006).

[23] *See* Exchange Rule 604. *See also generally* Chapter VI of the Exchange's Rules.

[24] *Id.*

[25] *See supra* notes 3 and 7.

[26] *See supra* note 7.

[27] Current Exchange port functionality supports cancelation rates that exceed one thousand messages per second and the Exchange's research indicates that certain Participants rely on such functionality and at times utilize such cancelation rates.

[28] *See* Exchange Rule 532.

requesting the Exchange staff to effect such cancellations.[29]

Similarly, Market Makers may use cancel-on-disconnect control when they experience a disruption in their connection to the Exchange and immediately cancel all pending quotes in the Exchange's System.[30] Finally, this existing purging functionality will allow Market Makers to achieve essentially the same outcome in canceling quotes as they would by utilizing the Purge Ports. Accordingly, the Exchange believes that the proposed Purge Port fee is reasonable because it is related to the efficiency of Purge Ports and to other means and services already available which are either free or already a part of a fee assessed to the Market Maker for existing connectivity. Accordingly, because Purge Ports provide additional optional functionality, excessive fees would simply serve to reduce or eliminate demand for this optional product.

The Exchange also believes that offering Purge Ports at the Matching Engine level promotes risk management across the industry, and thereby facilitates investor protection. Some market participants, in particular the larger firms, could and do build similar risk functionality (as described above) in their trading systems that permit the flexible cancellation of quotes entered on the Exchange at a high rate. Offering Matching Engine level protections ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality.

As noted above, the Exchange is not the only exchange to offer dedicated Purge Ports, and the proposed rate is lower than that charged by other exchanges for similar functionality. The Exchange also believes that moving to a per Matching Engine fee is reasonable due to the Exchange's architecture that provides it the ability to provide two (2) Purge Ports per Matching Engine for a fee that would still be lower than competing exchanges that charge on a per port basis. Generally speaking, restricting the Exchange's ability to charge fees for these services discourages innovation and competition. Specifically in this case, the Exchange's inability to offer similar services to those offered by other exchanges, and charge reasonable and equitable fees for such services, would put the Exchange at a significant competitive disadvantage and, therefore, serve to restrict competition in the market—especially when other exchanges assess comparable fees higher than those proposed by the Exchange.

The Exchange believes that the proposed Purge Port fees are equitable because the proposed Purge Ports are completely voluntary as they relate solely to optional risk management functionality.

The Exchange also believes that the proposed amendments to its Fee Schedule are not unfairly discriminatory because they will apply uniformly to all Market Makers that choose to use the optional Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily select this service option will be charged the same amount for the same services. All Market Makers have the option to select any connectivity option, and there is no differentiation among Market Makers with regard to the fees charged for the services offered by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Purge Ports are completely voluntary and are available to all Market Makers on an equal basis at the same cost. While the Exchange believes that Purge Ports provide a valuable service, Market Makers can choose to purchase, or not purchase, these ports based on their own determination of the value and their business needs. No Market Maker is required or under any regulatory obligation to utilize Purge Ports. Accordingly, the Exchange believes that Purge Ports offer appropriate risk management functionality to firms that trade on the Exchange without imposing an unnecessary or inappropriate burden on competition.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Purge Ports is constrained by competition among exchanges that offer similar functionality. As discussed, there are currently a number of similar offers available to market participants for higher fees at other exchanges. Proposing fees that are excessively higher than established fees for similar functionality would simply serve to reduce demand for the Purge Ports, which as discussed, market participants are under no obligation to utilize. It could also cause firms to shift trading to other exchanges that offer similar functionality at a lower cost, adversely impacting the overall trading on the Exchange and reducing market share. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for risk management. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own purge port functionality and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between Market Makers. The proposal would allow any interested Market Makers to purchase Purge Port functionality based on their business needs.

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 proposal.[31] This comment letter was submitted not only on this proposal, but also the proposals by the Exchange and its affiliates to amend fees for 10Gb ULL connectivity and certain ports. Overall, the Exchange believes that the issues raised by the commenter are not germane to this proposal because they apply primarily to the other fee filings. Also, the commenter's raised concerns 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. However, the commenter does raise one issue that concerns this proposal whereby it asserts that the Exchange's comparison to fees charged by other exchanges for similar ports is irrelevant and unpersuasive. The core of the issue raised is regarding the cost to connect to one exchange compared to the cost to connect to others. A thorough

[29] *See* Exchange Rule 519C(a).

[30] *See* Exchange Rule 519C(c).

[31] *See* letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (''Virtu''), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023.

response to this comment would require the Exchange to obtain competitively sensitive information about other exchange architecture and how their members connect. The Exchange is not privy to this information. Further, the commenter compares the Exchange's proposed rate to other exchanges that offer purge port functionality across all matching engines for a single fee, but fails to provide the same comparison to other exchanges that charge for purge functionality like proposed here. The Exchange does not have insight into the technical architecture of other exchanges so it is difficult to ascertain the number of purge ports a firm would need to connect to another exchanges entire market. Therefore, the Exchange is limited to comparing its proposed fee to other exchanges' purge port fees as listed in their fee schedules.

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,[32] and Rule 19b–4(f)(2) [33] 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–EMERALD–2023–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–EMERALD–2023–29. 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–EMERALD–2023–29 and should be submitted on or before January 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27067 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78s(b)(3)(A)(ii).

[33] 17 CFR 240.19b–4(f)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99081; File No. SR–NASDAQ–2023–045]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To List and Trade Shares of the iShares Ethereum Trust Under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)

December 5, 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 November 21, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposed rule change to list and trade shares of the iShares Ethereum Trust (the ''Trust'') under Nasdaq Rule 5711(d) (''Commodity-Based Trust Shares''). The shares of the Trust are referred to herein as the ''Shares.''

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* 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 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 list and trade the Shares under Nasdaq Rule 5711(d),[3] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange. iShares Delaware Trust Sponsor LLC, a Delaware limited liability company and an indirect subsidiary of BlackRock, Inc. (''BlackRock''), is the sponsor of the Trust (the ''Sponsor''). The Shares will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5711 in Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR–NASDAQ–2012–013).

be registered with the SEC by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[4]

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the ''Trust Agreement'') between the Sponsor, BlackRock Fund Advisors (the ''Trustee'') as the trustee of the Trust and will appoint a Delaware Trustee of the Trust (the ''Delaware Trustee'') by such time that the Registration Statement is effective. The Trust issues Shares representing fractional undivided beneficial interests in its net assets. The assets of the Trust consist primarily of ether held by a custodian on behalf of the Trust. Coinbase Custody Trust Company, LLC (the ''Ether Custodian''), is the custodian for the Trust's ether holdings; and another entity will be the custodian for the Trust's cash holdings (the ''Cash Custodian'' and together with the Ether Custodian, the ''Custodians'') and the administrator of the Trust (the ''Trust Administrator''). Under the Trust Agreement, the Trustee may delegate all or a portion of its duties to any agent, and has delegated the bulk of the day-to-day responsibilities to the Trust Administrator and certain other administrative and record-keeping functions to its affiliates and other agents. The Trust is not an investment company registered under the Investment Company Act of 1940, as amended (the ''1940 Act'').

The investment objective of the Trust is to reflect generally the performance of the price of ether. The Trust seeks to reflect such performance before payment of the Trust's expenses and liabilities. The Shares are intended to constitute a simple means of making an investment similar to an investment in ether rather than by acquiring, holding and trading ether directly on a peer-to-peer or other basis or via a digital asset exchange. The Shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in ether, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the price of ether owned by the Trust at such time, less the Trust's expenses and liabilities. Although the Shares are not the exact equivalent of a direct investment in ether, they provide investors with an alternative method of achieving investment exposure to the price of ether through the public securities market, which may be more familiar to them.

Custody of the Trust's Ether

An investment in the Shares is backed by ether held by the Ether Custodian on behalf of the Trust. The Ether Custodian will keep custody of all of the Trust's ether, other than that which is maintained in the Trading Balance with the Prime Broker, in accounts that are required to be segregated from the assets held by the Ether Custodian as principal and the assets of its other customers (the ''Vault Balance''), with any remainder of the Vault Balance held as part of a ''hot storage''.[5] The Ether Custodian will keep a substantial portion of the private keys associated with the Trust's ether in ''cold storage'' [6] (the ''Cold Vault Balance'') The hardware, software, systems, and procedures of the Ether Custodian may not be available or cost-effective for many investors to access directly.

Net Asset Value

The net asset value of the Trust will be equal to the total assets of the Trust, including but not limited to, all ether and cash less total liabilities of the Trust, each determined by the Trustee pursuant to policies established from time to time by the Trustee or its affiliates or otherwise described herein. The methodology used to calculate an index (the ''Index'') price to value ether in determining the net asset value of the Trust may not be deemed consistent with U.S. generally accepted accounting principles (''GAAP'').

The Sponsor has the exclusive authority to determine the Trust's net asset value, which it has delegated to the Trustee under the Trust Agreement. The Trustee has delegated to the Trust Administrator the responsibility to calculate the net asset value of the Trust and the NAV, based on a pricing source selected by the Trustee. In determining the Trust's net asset value, the Trust Administrator values the ether held by the Trust based on the Index, unless otherwise determined by the Sponsor in its sole discretion. The CME CF Ether-Dollar Reference Rate -New York Variant (the ''CF Benchmarks Index'') shall constitute the Index, unless the CF Benchmarks Index is not available or the Sponsor in its sole discretion determines not to use the CF Benchmarks Index as the Index. If the CF Benchmarks Index is not available or the Sponsor determines, in its sole discretion, that the CF Benchmarks Index should not be used, the Trust's holdings may be fair valued in accordance with the policy approved by the Sponsor.

The Trust's periodic financial statements may not utilize net asset value or NAV to the extent the methodology used to calculate the Index is deemed not to be consistent with GAAP. For purposes of the Trust's periodic financial statements, the Trust will utilize a pricing source that is consistent with GAAP, as of the financial statement measurement date. The Sponsor will determine in its sole discretion the valuation sources and policies used to prepare the Trust's financial statements in accordance with GAAP.

The Sponsor may declare a suspension of the calculation of the NAV of the Trust under certain circumstances.

Net Asset Value

On each Business Day, as soon as practicable after 4:00 p.m. Eastern Time (''ET''), the Trust Administrator evaluates the ether held by the Trust as reflected by the CF Benchmarks Index and determines the net asset value of the Trust and the NAV. For purposes of making these calculations, a Business Day means any day other than a day when Nasdaq is closed for regular trading.

The CF Benchmarks Index employed by the Trust is calculated on each Business Day by aggregating the notional value of ether U.S. dollar trading activity across major ether spot platforms. The CF Benchmarks Index is designed and administered in accordance with IOSCO Principles for Financial Benchmarks. The

[4] The descriptions of the Trust contained herein are based, in part, on information in the Registration Statement. The Registration Statement in not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[5] A portion of the Trust's ether holdings and cash holdings from time to time may be held with the Prime Broker, an affiliate of the Ether Custodian, in the Trading Balance, in connection with in-kind creations and redemptions of Baskets and the sale of ether to pay the Sponsor's Fee and Trust expenses not assumed by the Sponsor. These periodic holdings held in the Trading Balance with the Prime Broker represent an omnibus claim on the Prime Broker's ether held on behalf of clients; these holdings exist across a combination of omnibus hot wallets, omnibus cold wallets, or in accounts in the Prime Broker's name on a trading venue (including third-party venues and the Prime Broker's own execution venue) where the Prime Broker executes orders to buy and sell ether on behalf of its clients.

[6] The term ''cold storage'' refers to a safeguarding method by which the private keys corresponding to ether stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

Administrator of the CF Benchmarks Index is CF Benchmarks Ltd. (the ''Index Administrator''). The CF Benchmarks Index serves as a once-a-day benchmark rate of the U.S. dollar price of ether denominated in U.S. dollars (USD/ETH), calculated as of 4:00 p.m. ET. The CF Benchmarks Index aggregates the trade flow of ether-U.S. dollar markets operated by several ether spot trading platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of ether at 4:00 p.m. ET. Specifically, the CF Benchmarks Index is calculated based on the ''Relevant Transactions'' [7] of all spot trading platforms for ether-USD that meet the CME CF Constituent Exchange Criteria, which are currently: Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital (the ''Constituent Exchanges''), and which may change from time to time. Any changes to this composition of spot trading platforms are announced on the Administrator's website (*www.cfbenchmarks.com*).

If the CF Benchmarks Index is not available or the Sponsor determines, in its sole discretion, that the CF Benchmarks Index should not be used, the Trust's holdings may be fair valued in accordance with the policy approved by the Sponsor.

The Trust is intended to provide a way for Shareholders to obtain exposure to ether by investing in the Shares rather than by acquiring, holding and trading ether directly on a peer-to-peer or other basis or via a digital asset exchange. An investment in Shares of the Trust is not the same as an investment directly in ether on a peer-to-peer or other basis or via a digital asset exchange.

Creation and Redemption of Shares

The Trust issues and redeems baskets (''Baskets'') [8] on a continuous basis. Baskets are only issued or redeemed in exchange for an amount of ether determined by the Trustee on each day that Nasdaq is open for regular trading. No Shares are issued unless the Ether Custodian or Prime Broker has allocated to the Trust's account the corresponding amount of ether. The amount of ether necessary for the creation of a Basket, or to be received upon redemption of a Basket, will decrease over the life of the Trust, due to the payment or accrual of fees and other expenses or liabilities payable by the Trust. Baskets may be created or redeemed only by Authorized Participants, who pay BlackRock Investments, LLC (''BRIL''), an affiliate of the Trustee that has been retained by the Trust to perform certain order processing, Authorized Participant communications, and related services in connection with the issuance and redemption of Baskets (''ETF Services''), a transaction fee for each order to create or redeem Baskets.

Background

Ethereum is free software that is hosted on computers distributed throughout the globe. It employs an array of computer code-based logic, called a protocol, to create a unified understanding of ownership, commercial activity, and economic logic. This allows users to engage in commerce without the need to trust any of its participants or counterparties. Ethereum code creates verifiable and unambiguous rules that assign clear, strong property rights to create a platform for unrestrained business formation and free exchange. No single intermediary or entity operates or controls the Ethereum network (referred to as ''decentralization''), the transaction validation and recordkeeping infrastructure of which is collectively maintained by a disparate user base. The Ethereum network allows people to exchange tokens of value, or ether (''ETH''), which are recorded on a distributed public recordkeeping system or ledger known as a blockchain (the ''Ethereum Blockchain''), and which can be used to pay for goods and services, including computational power on the Ethereum network, or converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset exchanges or in individual peer-to-peer transactions. Furthermore, by combining the recordkeeping system of the Ethereum Blockchain with a flexible scripting language that is programmable and can be used to implement sophisticated logic and execute a wide variety of instructions, the Ethereum network is intended to act as a foundational infrastructure layer on top of which users can build their own custom software programs, as an alternative to centralized web servers. In theory, anyone can build their own custom software programs on the Ethereum network. In this way, the Ethereum network represents a project to expand blockchain deployment beyond a peer-to-peer private money system into a flexible, distributed alternative computing infrastructure that is available to all. On the Ethereum network, ETH is the unit of account that users pay for the computational resources consumed by running their programs.

Up to now, U.S. retail investors have lacked a U.S. regulated, U.S. exchange-traded vehicle to gain exposure to ETH. Instead, current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot ether or (ii) over-the-counter ether funds (''OTC ETH Funds'') with high management fees and potentially volatile premiums and discounts. Meanwhile, investors in other countries, including Germany, Switzerland and France, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical ETH) to gain exposure to ETH. Investors across Europe have access to products which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting ether exposure.[9]

To this point, the lack of an ETP that holds spot ETH (a ''Spot ETH ETP'') exposes U.S. investor assets to significant risk because investors that would otherwise seek cryptoasset exposure through a Spot ETH ETP are forced to find alternative exposure through generally riskier means. For example, investors in OTC ETH Funds are not afforded the benefits and protections of regulated Spot ETH ETPs, resulting in retail investors suffering losses due to drastic movements in the premium/discount of OTC ETH Funds. An investor who purchased the largest OTC ETH Fund in January 2021 and held the position at the end of 2022 would have suffered a 30% loss due to the change in the premium/discount, even if the price of ETH did not change. Many retail investors likely suffered losses due to this premium/discount in OTC ETH Fund trading; all such losses could have been avoided if a Spot ETH ETP had been available. Additionally,

[7] A ''Relevant Transaction'' is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a Constituent Exchange in the ETH/USD pair that is reported and disseminated by a Constituent Exchange through its publicly available API and observed by the Index Administrator.

[8] The Trust issues and redeems Shares only in blocks of a certain specified size or integral multiples thereof. A block of Shares is called a ''Basket.'' These transactions take place in exchange for ether. Baskets will be offered continuously at the net asset value per Share (''NAV'') for the Basket of Shares on the day that an order to create a Basket is accepted by the Trust. The Trust may change the number of Shares in a Basket. Only registered broker-dealers that become authorized participants by entering into a contract with the Sponsor and the Trustee (''Authorized Participants'') may purchase or redeem Baskets. Shares will be offered to the public from time to time at varying prices that will reflect the price of ether and the trading price of the Shares on Nasdaq at the time of the offer.

[9] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot ETH ETPs.

many U.S. investors that held their digital assets in accounts at FTX,[10] Celsius Network LLC,[11] BlockFi Inc.[12] and Voyager Digital Holdings, Inc.[13] have become unsecured creditors in the insolvencies of those entities. If a Spot ETH ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot ETH ETP. To this point, approval of a Spot ETH ETP would represent a major win for the protection of U.S. investors in the cryptoasset space. The Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including ETH, on centralized platforms.

Applicable Standard

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[14] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission regulated futures market.[15] Further to this point,

[10] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[11] *See* Celsius Network LLC, et al., Case No. 22–10964.

[12] *See* BlockFi Inc., Case No. 22–19361.

[13] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

[14] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order''). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market. Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' *See* Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot ether market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

[15] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE

the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange traded products (''ETPs'') are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [16]

As such, the regulated market of significant size test does not require that the spot ether market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Bitcoin Futures market, as defined below, is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and trading of funds that would primarily hold Bitcoin Futures that are registered under the Securities Act of 1933 (''1933 Act'') instead of the 1940 Act.[17] In the Teucrium Approval, the Commission found the Bitcoin Futures market to be a regulated market of significant size as it relates to Bitcoin Futures, which was inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the same pricing methodology as the Bitcoin Futures. However, and as discussed below, in recent weeks the SEC has approved a number of ETH-based exchange-traded funds (''ETFs'') for trading.

Meanwhile, the Commission has continued to disapprove proposals to list and trade Spot Bitcoin ETPs that would hold spot bitcoin on the seemingly conflicting basis that the CME Bitcoin Futures market is not a regulated market of significant size.[18] In the recently decided *Grayscale Investments, LLC* v. *Securities and Exchange Commission,*[19] however, the court resolved this conflict by finding that the SEC had failed to provide a coherent explanation as to why it had approved the Bitcoin Futures ETPs while disapproving the proposal to list and trade shares of the Grayscale Bitcoin Trust and vacating the disapproval order.[20]

As mentioned above, on October 2, 2023 the SEC approved nine ETH-based ETFs for trading.[21] The ETFs hold ETH futures contracts that trade on the CME and settle using the CME CF Ethereum Reference Rate (''ERR''), which is priced based on the spot ETH markets Coinbase, Kraken, LMAX, Bitstamp, Gemini, and itBit, essentially the same spot markets that are included in the Index that the Trust uses to value its ETH holdings. Given that the Commission has approved ETFs that offer exposure to ETH futures, which themselves are priced based on the underlying spot ETH market, the Sponsor believes that the Commission must also approve ETPs that offer exposure to spot ETH, like the Trust.

In the context of other digital asset-based ETF and ETP proposals for Bitcoin, the SEC has sought to justify treating futures-based ETFs differently from spot-based ETFs because of (i) distinctions between the regulations under which the two products would be registered (under the 1940 Act for digital-asset futures ETFs and 1933 Act for spot digital-asset ETPs), and (ii) the existence of regulation and surveillance-sharing over the CME digital-asset futures market through the Intermarket Surveillance Group (''ISG''), as compared to the spot market for those digital assets.[22]

While the 1940 Act has certain added investor protections that the 1933 Act does not require, these protections do not seek to allay harms arising from underlying assets or markets of assets that ETFs hold, such as the potential for fraud or manipulation in such markets. In other words, the Sponsor does not believe that the application of the 1940 Act supports the purported justifications the Commission has made in denying other spot digital asset ETPs. Instead, the 1940 Act seeks to remedy certain abusive practices in the management of investment companies such as ETFs, and thus places certain restrictions on ETFs and ETF sponsors. The 1940 Act explicitly lists out the types of abuses it seeks to prevent, and places certain restrictions related to

Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[16] *See* Winklevoss Order at 37592.

[17] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[18] The proposed spot bitcoin funds are nearly identical to the Trust but proposed to hold bitcoin instead of ETH.

[19] *Grayscale Investments, LLC* v. *Securities and Exchange Commission, et al.*, Case No. 22–1142 (the ''Grayscale Order'').

[20] *Id.*

[21] These ETFs included the Bitwise Ethereum Strategy ETF, Bitwise Bitcoin & Ether Equal Weight Strategy ETF, Hashdex Ether Strategy ETF, ProShares Ether Strategy ETF, ProShares Bitcoin & Ether Strategy ETF, ProShares Bitcoin & Ether Equal Weight Strategy ETF, Valkyrie Bitcoin & Ethereum Strategy ETF, VanEck Ethereum Strategy ETF, and Volatility Shares Ethereum Strategy ETF (collectively, the ''ETH Futures Approvals'').

[22] *See, e.g.,* Chair Gary Gensler Public Statement, ''Remarks Before the Aspen Security Forum,'' (August 3, 2021), stating that the Chair looked forward to the Commission's review of Bitcoin-based ETF proposals registered under the 1940 Act, ''particularly if those are limited to [the] CME-traded Bitcoin futures,'' noting the ''significant investor protection'' offered by the 1940 Act, *https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03;* Securities Exchange Act Release No. 93559 (November 12, 2021), 86 FR 64539 (November 18, 2021) (SR–CboeBZX–2021–019) (Order Disapproving a Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (''VanEck Order'') (denying the first spot bitcoin ETP registered under the 1933 Act following the first approval of a bitcoin futures ETF registered under the 1940 Act, noting the differences in the standard of review that applies to such products); Securities Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (SR–NYSEArca–2021–53) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Teucrium Bitcoin Futures Fund under NYSE ARCA Rule 8.200–E, Commentary .02 (Trust Issued Receipts)) (''Teucrium Order'') (approving the first bitcoin futures ETP registered under the 1933 Act, stating that ''With respect to the proposed ETP, the underlying bitcoin assets are CME bitcoin futures contracts. The relevant analysis, therefore, is whether Arca has a comprehensive surveillance sharing agreement with a regulated market of significant size related to CME bitcoin futures contracts. As discussed below, taking into consideration the direct relationship between the regulated market with which Arca has a surveillance-sharing agreement and the assets held by the proposed ETP, as well as developments with respect to the CME bitcoin futures market—including the launch of exchange-traded funds registered under the Investment Company Act of 1940 (''1940 Act'') that hold CME bitcoin futures (''Bitcoin Futures ETFs'')—the Commission concludes that the Exchange has the requisite surveillance-sharing agreement.'').

accounting, borrowing, custody, fees, and independent boards, among others. Notably, none of these restrictions address an ETF's underlying assets, whether ETH futures or spot ETH, or the markets from which such assets' pricing is derived, whether the CME ETH futures market or spot ETH markets. As a result, the Sponsor believes that the distinction between registration of ETH futures ETFs under the 1940 Act and the registration of spot ETH ETPs under the 1933 Act is one without a difference in the context of ETH-based ETP proposals.

As to (i) above, the Sponsor believes that because the CME ETH futures market is priced based on the underlying spot ETH market, any fraud or manipulation in the spot market would necessarily affect the price of ETH futures, thereby affecting the net asset value of an ETP holding spot ETH or an ETF holding ETH futures, as well as the price investors pay for such product's shares. Accordingly, either CME surveillance can detect spot-market fraud that affects both futures ETFs and spot ETPs, or that surveillance cannot do so for either type of product. Having approved ETH futures ETFs in part on the basis of such surveillance, the Commission has clearly determined that CME surveillance can detect spot-market fraud that would affect spot ETPs, and the Sponsor thus believes that it must also approve spot ETH ETPs on that basis.

In summary, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME ETH Futures market represents a regulated market of significant size as it relates both to the CME ETH Futures market and to the spot ETH market and that this proposal should be approved.

Additionally, the Sponsor believes that the distinctions between the 1940 Act and the 1933 Act, and the surveillance-sharing available for the CME ETH futures market versus the spot ETH market, are not meaningful in the context of ETH-based ETF and ETP proposals, and that such reasoning cannot be a basis for the Commission treating ETH futures ETFs differently from spot ETH ETPs like the Trust. The Sponsor believes that the Commission's approval of ETH futures ETFs means it must also approve spot ETH ETPs like the Trust.

CME ETH Futures

CME began offering trading in Ether Futures in February 2021. Each contract represents 50 ETH and is based on the CME CF Ether-Dollar Reference Rate.[23] The contracts trade and settle like other cash-settled commodity futures contracts. Most measurable metrics related to CME ETH Futures have generally trended up since launch, although some metrics have slowed recently. For example, there were 78,571 CME ETH Futures contracts traded in September 2023 (approximately $6.3 billion) compared to 163,114 ($11.9 billion) and 130,546 ($21.2 billion) contracts traded in September 2022, and September 2022 respectively.[24] The daily correlation between the spot ETH and the CME ETH Futures is 0.9993 from the period of 10/13/22 through 10/13/23.[25] The number of large open interest holders [26] and unique accounts trading CME ETH Futures have both increased, even in the face of heightened Ether price volatility.

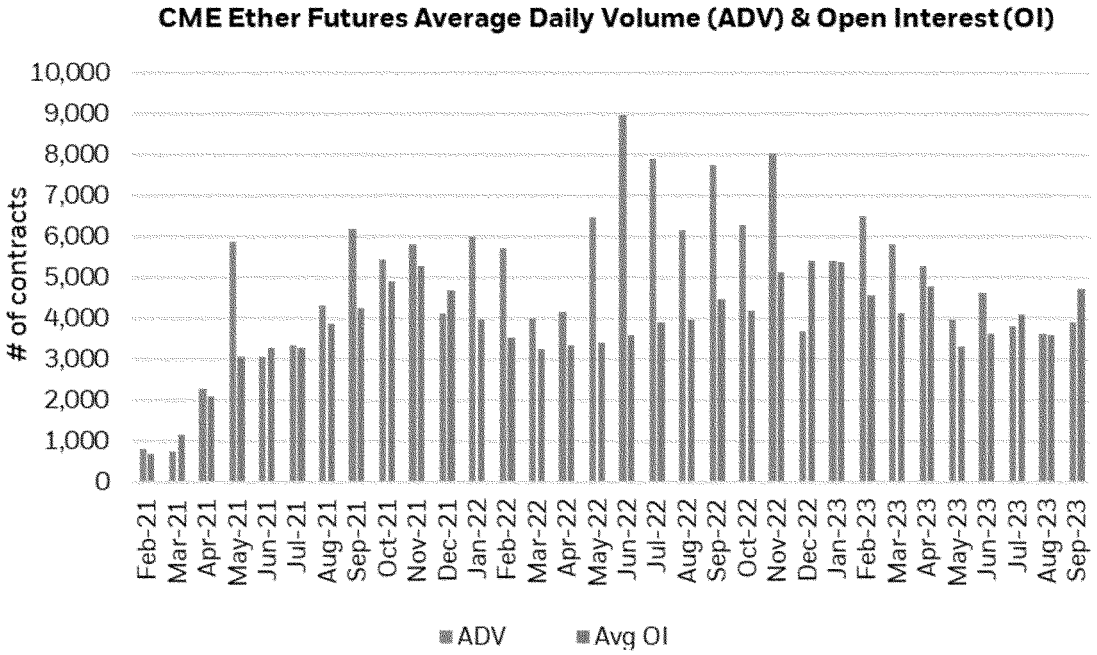
BILLING CODE 8011–01–P

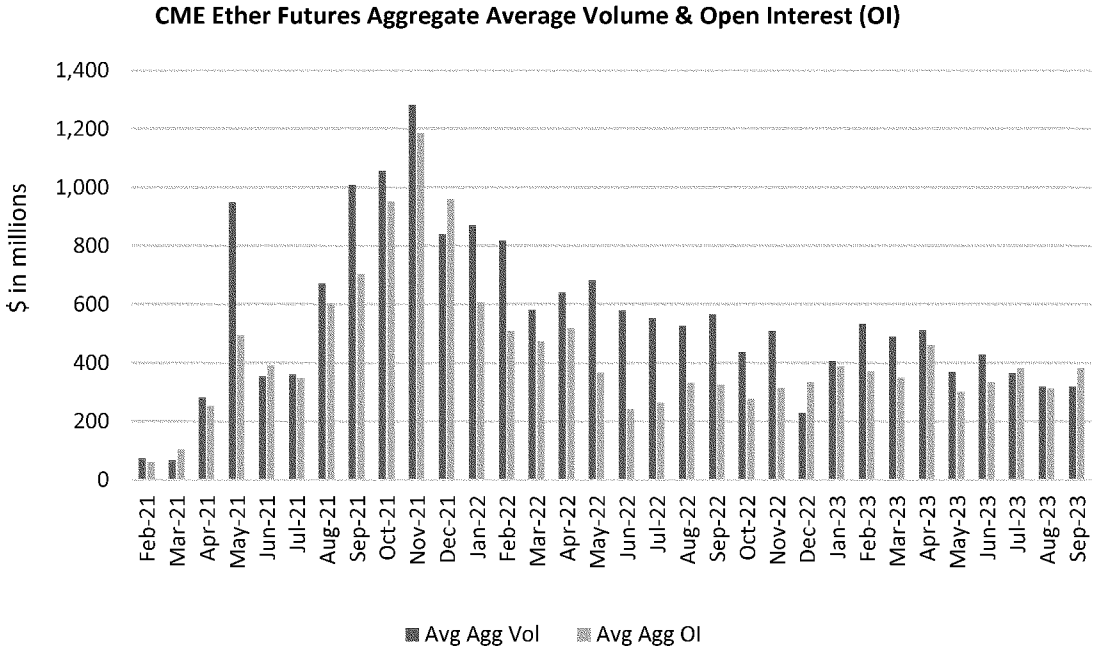
[23] The CME CF Ether-Dollar Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto exchanges and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[24] Source: Bloomberg, BlackRock calculations. Data as of 10/18/2023 for period shown (2/8/2021 to 9/30/2023).

[25] Source: S&P Ethereum Index, S&P CME Ether Futures Index (Spot).

[26] A large open interest holder in CME ETH Futures is an entity that holds at least 25 contracts, which is the equivalent of 1250 ether. At a price of approximately $1,867 per ether on 7/31/2023, more than 59 firms had outstanding positions of greater than $2.3 million in CME ETH Futures.





BILLING CODE 8011–01–C

Preventing Fraudulent and Manipulative Practices

In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [27] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest.

[27] The Exchange believes that ETH is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME ETH Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance sharing agreement in place [28] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[29] The only remaining issue to be addressed is whether the ETH Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[30]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance sharing agreement.[31]

(A) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

In light of the similarly high correlation between spot ETH/CME ETH Futures and spot bitcoin/CME Bitcoin Futures (.998 vs. .999, respectively),[32] applying the same rationale that the Commission applied to a Bitcoin Futures ETF in the Bitcoin Futures Approvals and the ETH Futures ETFs in the ETH Futures Approvals also indicates that this test is satisfied for this proposal. In the Teucrium Approval, the SEC stated:

The CME ''comprehensively surveils futures market conditions and price movements on a real time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME futures contracts, whether that attempt is made by directly trading on the CME futures market or indirectly by trading outside of the CME futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non cash assets held by the proposed ETP.[33]

The assumptions from this statement are also true for CME ETH Futures, a number of which have recently been approved by the Commission.[34] CME ETH Futures pricing is based on pricing from spot ETH markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME BTC futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME BTC futures contracts . . . indirectly by trading outside of the CME BTC futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME BTC Futures. This same logic would extend to CME ETH Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME ETH Futures. This was further acknowledged in the Grayscale lawsuit when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME ETH Futures.

As such, the part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares in the same way that it would be for the Bitcoin Futures ETPs, the ETH Futures ETPs and Spot Bitcoin ETPs.

(B) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME ETH Futures market or spot market for a number of reasons. First, because the Trust would not hold CME ETH Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME ETH Futures contracts use for pricing.[35] The Sponsor notes that ETH total 24-hour spot

[28] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[29] For a list of the current members and affiliate members of ISG, *see https://www.isgportal.com/.*

[30] *See* Wilshire Phoenix Disapproval.

[31] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[32] Source: S&P Ethereum Index, S&P CME Ether Futures Index (Spot), S&P Bitcoin Index, and S&P CME Bitcoin Futures Index (Spot).

[33] *See* Teucrium Approval at 21679.

[34] *See* supra footnote 21.

[35] This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that ''Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.''

trading volume has averaged $9.1B over the year ending October 16, 2023,[36] with approximately $1.7B occurring on venues whose trades are included in the sponsor's benchmark.[37] The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ETH market even in its most aggressive projections for the Trust's assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME ETH Futures market. Second, much like the CME Bitcoin Futures market, the CME ETH Futures market has progressed and matured significantly. As the court found in the Grayscale Order ''Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.'' The Exchange and sponsor agree with this sentiment and believe it applies equally to the spot ETH and CME ETH Futures markets.

(C) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

SSA With Ether Spot Market

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

On June 8, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (''Coinbase'') to enter into a Surveillance-Sharing Agreement, and the associated term sheet became effective as of June 16, 2023. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares. Trading of ETH on Coinbase represents a significant portion of US-based ETH trading. The Sponsor has stated to the Exchange that, based on publicly available data reported by spot ether platforms active in the U.S. market, trading on Coinbase has represented approximately 66% of US-dollar to ether trading on such U.S.-based platforms out of total YTD volume across these platforms of approximately U.S. $93 billion, as of October 16, 2023.[38]

The Surveillance Sharing Agreement is expected to be a bilateral surveillance-sharing agreement between Nasdaq and Coinbase that is intended to supplement the Exchange's market surveillance program. The Surveillance Sharing Agreement is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot ether trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot ether trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ETH through OTC ETH Funds is greater than $5 billion. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that, as described above, the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now at the very least outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ETH in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in ETH Futures ETFs and operating companies that are imperfect proxies for ETH exposure; and (iv) providing an alternative to custodying spot ETH.

Spot and Proxy Exposure to Ether

Exposure to ether through an ETP also presents certain advantages for retail investors compared to buying spot ether directly. The most notable advantage from the Sponsor's perspective is the elimination of the need for an individual retail investor to either manage their own private keys or to hold ether through a cryptocurrency exchange that lacks sufficient protections. Typically, retail exchanges hold most, if not all, retail investors' ether in ''hot'' (internet connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot ether directly in a self-hosted wallet may suffer from inexperience in private key management (*e.g.,* insufficient password protection, lost key, etc.), which point of failure could cause them to lose some or all of their ether holdings. Thus, with respect to custody of the Trust's ether assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot ether directly or via a digital asset exchange.

Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV; (b) the prior business day's Official Closing Price; (c) calculation of the premium or discount of such Official Closing Price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Trust Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of ether will be made available by one or more major market data vendors, updated at least every 15 seconds during the Regular Market Session. Information about the CF Benchmarks Index, including key elements of how the CF Benchmarks Index is calculated, will be publicly available at *https://*

[36] Source: CoinGecko.

[37] Source: CoinGecko, The Block, and BlackRock calculations.

[38] This analysis is based on the following spot ether platforms: Coinbase, Binance US, Kraken, Bitstamp, Gemini, and itBit.

www.cfbenchmarks.com/. Also, an estimated value that reflects an estimated intraday value of the Trust's portfolio (the ''Intraday Indicative Value'' or ''IIV''), will be disseminated.

One or more major market data vendors will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (ET)). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV during the trading day.

The IIV disseminated during the Exchange's Regular Market Session should not be viewed as an actual real time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services.

The NAV for the Trust will be calculated by the Trust Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(d)(vi), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and will be made available to all market participants at the same time. Upon termination of the Trust, the Shares will be removed from listing. The Delaware Trustee, will be a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Nasdaq Rule 5711(d)(vi)(D) and no change will be made to the Delaware Trustee without prior notice to and approval of the Exchange.

As required in Nasdaq Rule 5711(d)(vii), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(d). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 4:00 a.m. to 8:00 p.m. (ET). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d).

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the ether underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the IIV or the value of the underlying futures contract is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the underlying futures contract occurs. If the interruption to the dissemination of the IIV or the value of the underlying ether persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Additionally, on June 8, 2023, the Exchange reached an agreement on terms with Coinbase to enter into a Surveillance Sharing Agreement, and the associated term sheet became effective as of June 16, 2023. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares. Trading of ether on Coinbase represents a significant portion of US-based ether trading. The Sponsor has stated to the Exchange that, based on publicly available data reported by spot ether platforms active in the U.S. market, trading on Coinbase has represented approximately 66% of US-dollar to ETH trading on such U.S.-based platforms out of total YTD volume

across these platforms of approximately U.S. $93 billion, as of October 16, 2023.[39]

The Surveillance Sharing Agreement is expected to be a bilateral surveillance-sharing agreement between Nasdaq and Coinbase that is intended to supplement the Exchange's market surveillance program. The Surveillance Sharing Agreement is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot ether trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot ether trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Section 10 of Nasdaq General Rule 9, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post Market Sessions when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Draft Registration Statement. The Information Circular will also disclose the trading hours of the Shares. The Information Circular will disclose that information about the Shares will be publicly available on the Trust's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[40] in general and section 6(b)(5) of the Act[41] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,[42] including Commodity-Based Trust Shares,[43] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act because this filing sufficiently demonstrates that the CME ETH Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order for a proposal to list and trade a series of Commodity-Based Trust Shares to be deemed consistent with the Act, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place with a regulated market of significant size. Both the Exchange and CME are members of ISG.[44] As such, the only remaining issue to be addressed is whether the ETH Futures market constitutes a market of significant size, which the Exchange and the Sponsor believes that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[45]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[46]

(a) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct.

In light of the similarly high correlation between spot ETH/CME ETH Futures and spot bitcoin/CME Bitcoin Futures (.998 vs. .999, respectively),[47]

[39] This analysis is based on the following spot ether platforms: Coinbase, Binance US, Kraken, Bitstamp, Gemini, and itBit.

[40] 15 U.S.C. 78f.

[41] 15 U.S.C. 78f(b)(5).

[42] *See* Exchange Rule 5720.

[43] Commodity-Based Trust Shares, as described in Exchange Rule 5711(d), are a type of Trust Issued Receipt.

[44] For a list of the current members and affiliate members of ISG, *see https://www.isgportal.com/*.

[45] *See* Wilshire Phoenix Disapproval.

[46] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a ''cannot be manipulated'' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

[47] Source: S&P Ethereum Index, S&P CME Ether Futures Index (Spot), S&P Bitcoin Index, and S&P CME Bitcoin Futures Index (Spot).

applying the same rationale that the Commission applied to a Bitcoin Futures ETF in the Bitcoin Futures Approvals also indicates that this test is satisfied for this proposal. In the Teucrium Approval, the SEC stated:

The CME ''comprehensively surveils futures market conditions and price movements on a real time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME futures contracts, whether that attempt is made by directly trading on the CME futures market or indirectly by trading outside of the CME futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non cash assets held by the proposed ETP.[48]

The assumptions from this statement are also true for CME ETH Futures. CME ETH Futures pricing is based on pricing from spot ETH markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME BTC futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME BTC futures contracts . . . indirectly by trading outside of the CME BTC futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME BTC Futures. This same logic would extend to CME ETH Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME ETH Futures. This was further acknowledged in the Grayscale lawsuit when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME ETH Futures. This view is also consistent with the Sponsor's research.

As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares in the same way that it would be for both Bitcoin Futures ETPs and Spot Bitcoin ETPs.

(b) Predominant Influence on Prices in Spot and ETH Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in CME ETH Futures market or spot market for a number of reasons. First, because the Trust would not hold CME ETH Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME ETH Futures contracts use for pricing.[49] The Sponsor notes that ETH total 24-hour spot trading volume has averaged $9.1B over the year ending October 16, 2023,[50] with approximately $1.7B occurring on venues whose trades are included in the sponsor's benchmark.[51] The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ETH market even in its most aggressive projections for the Trust's assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME ETH Futures market. Second, much like the CME Bitcoin Futures market, the CME ETH Futures market has progressed and matured significantly. As the court found in the Grayscale Order ''Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.'' The Exchange and sponsor agree with this sentiment and believe it applies equally to the spot ETH and CME ETH Futures markets.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

Surveillance Sharing Agreement With Ether Spot Market

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

On June 8, 2023 the Exchange reached an agreement on terms with Coinbase, to enter into a Surveillance-Sharing Agreement, and the associated term sheet became effective as of June 16, 2023. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares. Trading of ETH on Coinbase represents a significant portion of US-based ETH trading. The Sponsor has stated to the Exchange that, based on publicly available data reported by spot ether platforms active in the U.S. market, trading on Coinbase has represented approximately 66% of US-dollar to ether trading on such U.S.-based platforms out of total YTD volume across these platforms of approximately U.S. $93 billion, as of October 16, 2023.[52]

The Surveillance Sharing Agreement is expected to be a bilateral surveillance-sharing agreement between Nasdaq and Coinbase that is intended to supplement the Exchange's market surveillance program. The Surveillance Sharing Agreement is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot ether trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot ether trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

[48] *See* Teucrium Approval at 21679.

[49] This logic is reflected by the court in the Grayscale Order at 17–18. Specifically, the court found that ''Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market . . . But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.''

[50] Source: CoinGecko.

[51] Source: CoinGecko, The Block, and BlackRock calculations.

[52] This analysis is based on the following spot ether platforms: Coinbase, Binance US, Kraken, Bitstamp, Gemini, and itBit.

Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ETH through OTC ETH Funds is greater than $5 billion. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that, as described above, the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now at the very least outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ETH in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in ETH Futures ETFs and operating companies that are imperfect proxies for ETH exposure; and (iv) providing an alternative to custodying spot ETH.

Commodity-Based Trust Shares—Nasdaq Rule 5711(d)

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5711(d). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. The Exchange may obtain information regarding trading in the Shares and listed ETH derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about ETH and will be available regarding the Trust and the Shares. In addition to the price transparency of the CF Benchmarks Index, the Trust will provide information regarding the Trust's ETH holdings as well as additional data regarding the Trust.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV; (b) the prior business day's Official Closing Price; (c) calculation of the premium or discount of such Official Closing Price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Trust Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of ether will be made available by one or more major market data vendors, updated at least every 15 seconds during the Regular Market Session. Information about the CF Benchmarks Index, including key elements of how the CF Benchmarks Index is calculated, will be publicly available at *https://www.cfbenchmarks.com/*. Also, an estimated value that reflects an estimated IIV, will be disseminated.

One or more major market data vendors will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (ET)). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV during the trading day.

The IIV disseminated during the Exchange's Regular Market Session should not be viewed as an actual real time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services.

The NAV for the Trust will be calculated by the Trust Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for ether is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as CF Benchmarks. Information relating to trading, including price and volume information, in ETH is available from major market data vendors and from the exchanges on which ETH is traded. Depth of book information is also available from ETH exchanges. The normal trading hours for ETH exchanges are 24 hours per day, 365 days per year.

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the e CME ETH Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change rather will facilitate the listing and trading of additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (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–NASDAQ–2023–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2023–045. 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–NASDAQ–2023–045 and should be submitted on or before January 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27062 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99095; File No. SR–MEMX–2023–25]

Self-Regulatory Organizations; MEMX LLC; Notice of Withdrawal of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Establish an Options Regulatory Fee

December 6, 2023.

On September 27, 2023, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–MEMX–2023–25) to establish an Options Regulatory Fee.[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on October 4, 2023.[5] On November 24, 2023, pursuant to section 19(b)(3)(C) of the Act, the Commission temporarily suspended the proposed rule change and instituted proceedings under section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[6] On December 1, 2023, the Exchange withdrew the proposed rule change (SR–MEMX–2023–25).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27165 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99088; File No. SR–MIAX–2023–43]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Purge Ports

December 5, 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 November 22, 2023, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Options Exchange Fee Schedule (the ''Fee Schedule'') to amend fees for Purge Ports.[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at

[53] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98585 (September 28, 2023), 88 FR 68692 (October 4, 2023) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Notice, *supra* note 3.

[6] *See* Securities Exchange Act Release No. 99017, 88 FR 83590 (November 30, 2023).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed fee change is based on a recent proposal by Nasdaq Phlx LLC (''Phlx'') to adopt fees for purge ports. *See* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

MIAX's principal office, 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 fees for Purge Ports, which is a function enabling Market Makers [4] to cancel all open quotes or a subset of open quotes through a single cancel message. The Exchange currently provides Market Makers the option to purchase Purge Ports to assist in their quoting activity. Purge Ports provide Market Makers with the ability to send purge messages to the Exchange System.[5] Purge Ports are not capable of sending or receiving any other type of messages or information. The use of Purge Ports is completely optional and no rule or regulation requires that a Market Maker utilize them.

The Exchange initially filed the proposal on September 29, 2023 (SR–MIAX–2023–37) (the ''Initial Proposal'').[6] On November 22, 2023, the Exchange withdrew the Initial Proposal and replaced it with this filing.

Unlike other options exchanges that charge fees for Purge Ports on a per port basis,[7] the Exchange assesses a flat fee of $1,500 per month, regardless of the number of Purge Ports utilized by a Market Maker. Currently, a Market Maker may request and be allocated two (2) Purge Ports per Matching Engine [8] to which it connects and not all Market Makers connect to all of the Exchange's Matching Engines.

The Exchange now proposes to amend the fee for Purge Ports to align more closely with other exchanges who charge on a per port basis by providing two (2) Purge Ports per Matching Engine for a monthly flat fee of $300 per month per Matching Engine. The only difference with a per port structure is that Market Makers receive two (2) Purge Ports per Matching Engine for the same proposed monthly fee, rather than being charged a separate fee for each Purge Port. The Exchange proposes to charge the proposed fee for Purge Ports per Matching Engine, instead on a per Purge Port basis, due to its System architecture which provides two (2) Purge Ports per Matching Engine for redundancy purposes. In addition, the proposed fee is lower than the comparable fee charged by competing exchanges that also charge on a per port basis, notwithstanding that the Exchange is providing up to two (2) Purge Ports for that same lower fee.[9]

Similar to a per port charge, Market Makers are able to select the Matching Engines that they want to connect to,[10] based on the business needs of each Market Maker, and pay the applicable fee based on the number of Matching Engines and ports utilized. The Exchange believes that the proposed fee provides Market Makers with flexibility to control their Purge Port costs based on the number of Matching Engines each Marker Maker elects to connect to based on each Market Maker's business needs.

* * * * *

A logical port represents a port established by the Exchange within the Exchange's System for trading and billing purposes. Each logical port grants a Member [11] the ability to accomplish a specific function, such as order entry, order cancellation, access to execution reports, and other administrative information.

Purge Ports are designed to assist Market Makers [12] in the management of, and risk control over, their quotes, particularly if the firm is dealing with a large number of securities. For example, if a Market Maker detects market indications that may influence the execution potential of their quotes, the Market Maker may use Purge Ports to reduce uncertainty and to manage risk by purging all quotes in a number of securities. This allows Market Makers to seamlessly avoid unintended executions, while continuing to evaluate the market, their positions, and their risk levels. Purge Ports are used by Market Makers that conduct business activity that exposes them to a large amount of risk across a number of securities. Purge Ports enable Market Makers to cancel all open quotes, or a subset of open quotes through a single cancel message. The Exchange notes that Purge Ports increase efficiency of already existing functionality enabling the cancellation of quotes.

The Exchange operates highly performant systems with significant throughput and determinism which allows participants to enter, update and cancel quotes at high rates. Market Makers may currently cancel individual quotes through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations.[13] Other than Purge Ports being a dedicated line for cancelling quotations, Purge Ports operate in the same manner as a mass cancel message being sent over a different type of port. For example, like Purge Ports, mass cancellations sent over a logical port may be done at either the firm or MPID level. As a result, Market Makers can currently cancel quotes in rapid succession across their

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 98732 (October 12, 2023), 88 FR 71913 (October 18, 2023) (SR–MIAX–2023–37).

[7] *See* Cboe BZX Exchange, Inc. (''BZX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe EDGX Exchange, Inc. (''EDGX'') Options Fee Schedule, Options Logical Port Fees, Purge Ports ($750 per purge port per month); Cboe Exchange, Inc. (''Cboe'') Fee Schedule ($850 per purge port per month). *See also* Nasdaq GEMX, Options 7, Pricing Schedule, Section 6.C.(3). Nasdaq GEMX, LLC (''Nasdaq GEMX'') assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports, applicable to market makers. *See also* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).

[8] A Matching Engine is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

[9] *See supra* note 7.

[10] The Exchange notes that each Matching Engine corresponds to a specified group of symbols. Certain Market Makers choose to only quote in certain symbols while other Market Makers choose to quote the entire market.

[11] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[12] Members seeking to become registered as a Market Maker must comply with the applicable requirements of Chapter VI of the Exchange's Rules.

[13] *See* Exchange Rule 519C(a) and (b).

existing logical ports [14] or through a single cancel message, all open quotes or a subset of open quotes.

Similarly, Market Makers may also use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to automatically cancel all quotes, as configured or instructed by the Member or Market Maker.[15] In addition, the Exchange already provides similar ability to mass cancel quotes through the Exchange's risk controls, which are offered at no charge and enables Market Makers to establish pre-determined levels of risk exposure, and can be used to cancel all open quotes.[16] Accordingly, the Exchange believes that the Purge Ports provide an efficient option as an alternative to already available services and enhance the Market Maker's ability to manage their risk.

The Exchange believes that market participants benefit from a dedicated purge mechanism for specific Market Makers and to the market as a whole. Market Makers will have the benefit of efficient risk management and purge tools. The market will benefit from potential increased quoting and liquidity as Market Makers may use Purge Ports to manage their risk more robustly. Only Market Makers that request Purge Ports would be subject to the proposed fees, and other Market Makers can continue to operate in exactly the same manner as they do today without dedicated Purge Ports, but with the additional purging capabilities described above.

Implementation Date

The proposed fees are immediately effective.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[17] in general, and furthers the objectives of section 6(b)(5) of the Act,[18] in particular, in that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed fee is consistent with section 6(b)(4) of the Act [19] because it represents an equitable allocation of reasonable dues, fees and other charges among market participants.

The Exchange supports the proposed fee change with the below justification because a similar justification was used in a recent 2023 proposal filed with the Commission by another national securities exchange, Phlx, to adopt fees for purge ports, which the Commission deemed acceptable by not suspending that filing during the applicable 60-day review period.[20] In fact, the same justification Phlx utilized was also used in similar recent proposals to adopt fees for purge ports by two of Phlx's affiliated exchanges.[21] Therefore, the Exchange utilized the below justification based on this recent Commission precedent from approximately one month ago.

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Market Makers optional service and flexible fee structures which promotes choice, flexibility, efficiency, and competition. The Exchange believes Purge Ports enhance Market Makers' ability to manage quotes, which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that Purge Ports foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating Purge Ports for purge messages may encourage better use of such ports. This may, concurrent with the ports that carry quotes and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. Similar connectivity and functionality is offered by options exchanges, including the Exchange's own affiliated options exchanges, and other equities exchanges.[22] The Exchange believes that proper risk management, including the ability to efficiently cancel multiple quotes quickly when necessary, is similarly valuable to firms that trade in the equities market, including Market Makers that have heightened quoting obligations that are not applicable to other market participants.

Purge Ports do not relieve Market Makers of their quoting obligations or firm quote obligations under Regulation NMS Rule 602.[23] Specifically, any interest that is executable against a Member's or Market Maker's quotes that is received by the Exchange prior to the time of the removal of quotes request will automatically execute. Market Makers that purge their quotes will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day.[24]

The Exchange is not the only exchange to offer this functionality and to charge associated fees.[25] The Exchange believes the proposed fee for Purge Ports is reasonable because it is lower than the fees currently charged by other exchanges for similar port functionality. For example, BZX and EDGX charge a fee of $750 per purge port per month, Cboe charges $850 per purge port per month, Nasdaq GEMX assesses its members $1,250 per SQF Purge Port per month, subject to a monthly cap of $17,500 for SQF Purge Ports and SQF Ports.[26]

The Exchange believes it is reasonable to charge $300 per month for Purge Ports as proposed because such ports were specially developed to allow Market Makers to send a single message to cancel multiple quotes, thereby assisting firms in effectively managing risk. The Exchange also believes that a Member that chooses to utilize Purge Ports may, in the future, reduce their need for additional ports by consolidating cancel messages to their dedicated Purge Port and thus freeing up some capacity of the existing logical ports and, therefore, allowing for increased message traffic without paying for additional logical ports. Purge Ports provide the ability to cancel

[14] Current Exchange port functionality supports cancelation rates that exceed one thousand messages per second and the Exchange's research indicates that certain market participants rely on such functionality and at times utilize such cancelation rates.

[15] *See* Exchange Rule 519C(c).

[16] *See* Exchange Rule 532.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(4).

[20] *See supra* note 3.

[21] *See* Securities Exchange Act Release Nos. 98770 (October 18, 2023), 88 FR 73065 (October 24, 2023) (SR–BX–2023–026); *and* 98768 (October 18, 2023), 88 FR 73056 (October 24, 2023) (SR–NASDAQ–2023–041). While the Exchange included a cos- based justification in a related filing to amend fees for connectivity, it does not believe a cost-based justification is require here because Purge Ports are optional functionality and no cost-based justification was provided by Phlx or any of its affiliates in their same filings to adopt fees for purge ports. Nor does the Commission Staff's own fee guidance include such a requirement. *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.*

[22] *See supra* notes 3 and 7. *See also* Securities Exchange Act Release No. 77613 (April 13, 2016), 81 FR 23023 (April 19, 2016). *See* also Securities Exchange Act Release Nos. 79956 (February 3, 2017), 82 FR 10102 (February 9, 2017) (SR–BatsBZX–2017–05); 79957 (February 3, 2017), 82 FR 10070 (February 9, 2017) (SR–BatsEDGX–2017–07); 83201 (May 9, 2018), 83 FR 22546 (May 15, 2018) (SR–C2–2018–006).

[23] *See* Exchange Rule 604. *See also generally* Chapter VI of the Exchange's Rules.

[24] *Id.*

[25] *See supra* notes 3 and 7.

[26] *See supra* note 7.

multiple quotes with a single message over a dedicated port, and, therefore, may create efficiencies for firms and provide a more efficient solution for them based on their risk management needs. In addition, Purge Port requests may cancel quotes submitted over numerous ports and contain added functionality to purge only a subset of these quotes. Effective risk management is important both for individual market participants that choose to utilize risk features provided by the Exchange, as well as for the market in general. As a result, the Exchange believes that it is appropriate to charge fees for such functionality as doing so aids in the maintenance of a fair and orderly market.

The Exchange also believes that its ability to set fees for Purge Ports is subject to significant substitution-based forces because Market Makers are able to rely on currently available services both free and those they receive when using existing trading protocols. If the value of the efficiency introduced through the Purge Port functionality is not worth the proposed fees, Market Makers will simply continue to rely on the existing functionality and not pay for Purge Ports. In that regard, Market Makers may currently cancel individual quotes through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations. Already Market Makers can also cancel quotes individually and by utilizing Exchange protocols that allow them to develop proprietary systems that can send cancel messages at a high rate.[27] In addition, the Exchange already provides similar ability to mass cancel quotes through the Exchange's risk controls, which are offered at no charge that enables Market Makers to establish pre-determined levels of risk exposure, and can be used to cancel all open quotes.[28] Further, like Purge Ports, Members may also cancel all or a subset of its orders in the System, by firm name or by MPID, over their existing ports, or by requesting the Exchange staff to effect such cancellations.[29]

Similarly, Market Makers may use cancel-on-disconnect control when they experience a disruption in their connection to the Exchange and immediately cancel all pending quotes in the Exchange's System.[30] Finally, this existing purging functionality will allow Market Makers to achieve essentially the same outcome in canceling quotes as they would by utilizing the Purge Ports. Accordingly, the Exchange believes that the proposed Purge Port fee is reasonable because it is related to the efficiency of Purge Ports and to other means and services already available which are either free or already a part of a fee assessed to the Market Maker for existing connectivity. Accordingly, because Purge Ports provide additional optional functionality, excessive fees would simply serve to reduce or eliminate demand for this optional product.

The Exchange also believes that offering Purge Ports at the Matching Engine level promotes risk management across the industry, and thereby facilitates investor protection. Some market participants, in particular the larger firms, could and do build similar risk functionality (as described above) in their trading systems that permit the flexible cancellation of quotes entered on the Exchange at a high rate. Offering Matching Engine level protections ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality.

As noted above, the Exchange is not the only exchange to offer dedicated Purge Ports, and the proposed rate is lower than that charged by other exchanges for similar functionality. The Exchange also believes that moving to a per Matching Engine fee is reasonable due to the Exchange's architecture that provides it the ability to provide two (2) Purge Ports per Matching Engine for a fee that would still be lower than competing exchanges that charge on a per port basis. Generally speaking, restricting the Exchange's ability to charge fees for these services discourages innovation and competition. Specifically in this case, the Exchange's inability to offer similar services to those offered by other exchanges, and charge reasonable and equitable fees for such services, would put the Exchange at a significant competitive disadvantage and, therefore, serve to restrict competition in the market—especially when other exchanges assess comparable fees higher than those proposed by the Exchange.

The Exchange believes that the proposed Purge Port fees are equitable because the proposed Purge Ports are completely voluntary as they relate solely to optional risk management functionality.

The Exchange also believes that the proposed amendments to its Fee Schedule are not unfairly discriminatory because they will apply uniformly to all Market Makers that choose to use the optional Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily select this service option will be charged the same amount for the same services. All Market Makers have the option to select any connectivity option, and there is no differentiation among Market Makers with regard to the fees charged for the services offered by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Purge Ports are completely voluntary and are available to all Market Makers on an equal basis at the same cost. While the Exchange believes that Purge Ports provide a valuable service, Market Makers can choose to purchase, or not purchase, these ports based on their own determination of the value and their business needs. No Market Maker is required or under any regulatory obligation to utilize Purge Ports. Accordingly, the Exchange believes that Purge Ports offer appropriate risk management functionality to firms that trade on the Exchange without imposing an unnecessary or inappropriate burden on competition.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Purge Ports is constrained by competition among exchanges that offer similar functionality. As discussed, there are currently a number of similar offers available to market participants for higher fees at other exchanges. Proposing fees that are excessively higher than established fees for similar functionality would simply serve to reduce demand for the Purge Ports, which as discussed, market participants are under no obligation to utilize. It could also cause firms to shift trading to other exchanges that offer similar functionality at a lower cost, adversely impacting the overall trading on the

[27] Current Exchange port functionality supports cancelation rates that exceed one thousand messages per second and the Exchange's research indicates that certain Participants rely on such functionality and at times utilize such cancelation rates.

[28] *See* Exchange Rule 532.

[29] *See* Exchange Rule 519C(a).

[30] *See* Exchange Rule 519C(c).

Exchange and reducing market share. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for risk management. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own purge port functionality and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between Market Makers. The proposal would allow any interested Market Makers to purchase Purge Port functionality based on their business needs.

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 proposal.[31] This comment letter was submitted not only on this proposal, but also the proposals by the Exchange and its affiliates to amend fees for 10Gb ULL connectivity and certain ports. Overall, the Exchange believes that the issues raised by the commenter are not germane to this proposal because they apply primarily to the other fee filings. Also, the commenter's raised concerns 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. However, the commenter does raise one issue that concerns this proposal whereby it asserts that the Exchange's comparison to fees charged by other exchanges for similar ports is irrelevant and unpersuasive. The core of the issue raised is regarding the cost to connect to one exchange compared to the cost to connect to others. A thorough response to this comment would require the Exchange to obtain competitively sensitive information about other exchange architecture and how their members connect. The Exchange is not privy to this information. Further, the commenter compares the Exchange's proposed rate to other exchanges that offer purge port functionality across all matching engines for a single fee, but fails to provide the same comparison to other exchanges that charge for purge functionality like proposed here. The Exchange does not have insight into the technical architecture of other exchanges so it is difficult to ascertain the number of purge ports a firm would need to connect to another exchanges entire market. Therefore, the Exchange is limited to comparing its proposed fee to other exchanges' purge port fees as listed in their fee schedules.

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,[32] and Rule 19b–4(f)(2)[33] 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–MIAX–2023–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–2023–43. 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–MIAX–2023–43 and should be submitted on or before January 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27066 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

[31] *See* letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (''Virtu''), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023.

[32] 15 U.S.C. 78s(b)(3)(A)(ii).

[33] 17 CFR 240.19b–4(f)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99082; File No. SR–NYSEARCA–2023–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

December 5, 2023.

On October 10, 2023, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to list and trade shares of the Grayscale Ethereum Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on October 27, 2023.[3]

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 11, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates January 25, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEARCA–2023–70).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27063 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–558, OMB Control No. 3235–0617]

Submission for OMB Review; Comment Request; Extension: Rule 433

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 433 (17 CFR 230.433) governs the use and filing of free writing prospectuses under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Rule 433 is to reduce the restrictions on communications that an issuer can make to investors during a registered offering of its securities, while maintaining important investor protections. A free writing prospectus meeting the conditions of Rule 433(d)(1) must be filed with the Commission and is publicly available. We estimate that it takes approximately 2.44764 hours per response to prepare a free writing prospectus and that approximately 20,179 responses are filed per year for a total internal burden of 49,391 hours (2.4476 hours per response × 20,179 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by January 10, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27145 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–114, OMB Control No. 3235–0102]

Submission for OMB Review; Comment Request; Extension: Tender Offer—Regulation 14D and Regulation 14E, Schedule 14D–9

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation 14D (17 CFR 240.14d–1—240.14d–11) and Regulation 14E (17 CFR 240.14e–1—240.14e–8) and related Schedule 14D–9 (17 CFR 240.14d–101) require information important to security holders in deciding how to respond to tender offers. Schedule 14D–9 takes approximately 260.56 hours per response to prepare and is filed by approximately 63 companies annually. We estimate that 25% of the 260.56 hours per response (65.14 hours) is prepared by the company for an annual reporting burden of 4,104 hours (65.14 hours per response × 63 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may not view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by January 10, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27149 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98780 (Oct. 23, 2023), 88 FR 73892. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99083; File No. SR–PHLX–2023–40]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend Equity 4, Rules 3301A and 3301B To Establish New ''Contra Midpoint Only'' and ''Contra Midpoint Only With Post-Only'' Order Types and To Make Other Corresponding Changes to the Rulebook

December 5, 2023.

On August 28, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Equity 4, Rules 3301A and 3301B [3] to establish new ''Contra Midpoint Only'' (''CMO'') and ''Contra Midpoint Only with Post-Only'' (''CMO+PO'') order types and to make other corresponding changes to the Phlx Rulebook. The proposed rule change was published for comment in the **Federal Register** on September 8, 2023.[4] On September 26, 2023, pursuant to section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On November 2, 2023, the Exchange filed partial Amendment No.1 to the proposed rule change.[7] The Commission has received three comment letters on the proposed rule change, and the Exchange submitted a response to comments when it filed partial Amendment No. 1.[8]

The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by partial Amendment No. 1, from interested persons and is instituting proceedings pursuant to section 19(b)(2)(B) of the Act [9] to determine whether to approve or disapprove the proposed rule change, as modified by partial Amendment No. 1.

I. Description of the Proposal, as Modified by Partial Amendment No. 1

The Exchange proposes to amend Equity 4, Rule 3301A(b) to establish ''CMO'' and ''CMO+PO'' as new order types on the Exchange. The Exchange states that a CMO is a Non-Displayed Order Type priced at the midpoint between the National Best Bid and the National Best Offer (the ''NBBO'' and the midpoint of the NBBO, the ''Midpoint'').[10] The Exchange states it will remove a CMO resting on the Order Book upon entry of certain types of incoming Orders that are likely to result in unfavorable executions, including because the incoming Orders are likely to indicate price movements that would be more favorable to the resting CMO user than the prevailing price.[11] According to the Exchange, the CMO provides protection to the resting CMO user against executions at the prevailing Midpoint price that the user may deem unfavorable.[12] The Exchange states that once the System removes a CMO under these circumstances, it would submit a new CMO at the then-current Midpoint price automatically on behalf of the user.[13] The Exchange states that when it removes a CMO from its Order Book, it would not send a cancellation message, thus limiting the potential for information leakage.[14]

According to the Exchange, a CMO+PO is like a CMO, except that it provides for ''post-only'' functionality, meaning that like a Midpoint Peg Post-Only Order,[15] a CMO+PO will execute upon entry only in circumstances where economically beneficial to the party entering the Order.[16] The Exchange states that the CMO and CMO+PO are Order Types that it has developed to provide market participants with options to make their own determinations on various trade-offs that exist when executing their strategies in the markets (*e.g.,* the amount of liquidity they can obtain in the near term versus the potential for market movement relative to the Midpoint price).[17] The Exchange states that some participants may value avoiding immediate executions in order to wait for a better price while others would rather obtain the liquidity instead of waiting.[18]

The Exchange states that a CMO is a non-displayed Order Type with the Midpoint Pegging Attribute that will be priced and ranked in time order at the Midpoint and that a user may cancel a CMO at any time. According to the Exchange, the System will remove a CMO Order automatically if a CMO is resting at the Midpoint on the Exchange Book, an incoming Order is priced through the price of the CMO, the CMO would otherwise trade against the incoming Order,[19] and one or more of the following conditions apply, which the Exchange anticipates are indicative of a pending price shift in favor of the CMO user: the incoming Order is Displayed and its size is greater than that of the resting CMO; [20] or the incoming Order is not Displayed, it is priced at or better than the far side of the NBBO, and its size is greater than that of the resting CMO.[21]

The Exchange provides the following two examples to illustrate the concept. In the first example, the National Best Bid is $10.00 and the National Best

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Phlx Rules in the 3000 Series shall mean rules in Phlx Equity 4.

[4] *See* Securities Exchange Act Release No. 98280 (Sept. 1, 2023), 88 FR 62129 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 98528, 88 FR 67846 (Oct. 2, 2023). The Commission designated December 7, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[7] In partial Amendment No. 1, the Exchange (i) modified an example that illustrates the operation of the CMO order type; (ii) added in Rule 3301A(7)(B) that a user may enter a CMO using OUCH, RASH, and FIX; and (iii) added in Rule 3301A(8) that FIX, in addition to OUCH and RASH, may be used to enter a CMO+PO. When it submitted Amendment No. 1, the Exchange also submitted it as a comment letter to the filing. *See* Letter from Brett Kitt, Associate Vice President and Principal and Associate General Counsel, Nasdaq, Inc., to Vanessa Countryman, Secretary, Commission, dated November 2, 2023 (''PHLX Response Letter''), *available at: https://www.sec.gov/comments/sr-phlx-2023-40/srphlx202340-293100-713082.pdf.*

[8] Comments and the Exchange's response to comments are available at: *https://www.sec.gov/comments/sr-phlx-2023-40/srphlx202340-299539-740902.pdf.*

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *See* Notice, *supra* note 4, at 62130.

[11] *See id.*

[12] *See id.*

[13] *See id.*

[14] *See id.* at 62130 n.4.

[15] *See id.* at 62130. *See also* Rule 3301A(b)(6).

[16] *See* Notice, *supra* note 4, at 62130.

[17] *See id.*

[18] *See id.*

[19] *See id.* The Exchange states, as an example, that the incoming Order is filled fully by resting interest with price/time priority ahead of the resting CMO Order, then the System will not remove the CMO Order from the Order Book. *See id.* at 62130 n.9.

[20] *See id.* at 62130. The Exchange states that in this scenario, the Exchange observes that the incoming Order has the potential to cause the NBBO to shift, such that removal of the CMO will be preferable to allowing the CMO to execute at a Midpoint price that may be stale. The System will then automatically re-submit a new CMO on behalf of the user after removing the original CMO. *See id.*

[21] *See id.* at 62130. The Exchange states that in this scenario, the incoming Order may not cause a shift in the NBBO, due to its hidden nature, but because it is priced aggressively at the far side of the NBBO, it still offers a CMO user an opportunity for an execution that is more favorable than the prevailing midpoint price. CMO functionality enables a participant to avail itself of this opportunity. *See id.*

Offer is $11.00 and Participant A enters Order 1, which is a CMO to buy 100 shares of X that is priced at $10.50, the midpoint of the NBBO. While Order 1 is resting on the Exchange Book, Participant B enters Order 2, which is a Displayed Order to sell 200 shares of X at $10.40. The Exchange explains that in this instance, Order 2 is larger than Order 1 and that if Order 1 was not a CMO and it had executed against Order 2 at $10.50, then Participant A would have missed out on the favorable impact of Order 2 shifting the midpoint of the NBBO lower to $10.20. The Exchange states that, to avoid the outcome, the System would remove Order 1 from the Exchange Book and resubmit it as Order 3, priced at $10.20. If Participant C then enters Order 4 to sell 100 shares of X at $10.20, Order 3 would execute against Order 4 at $10.20, thus providing Participant A with price improvement.[22]

The Exchange provides a second example, in which the National Best Bid is $10.00 and the National Best Offer is $11.00, and Participant A again enters Order 1, which is a CMO to buy 100 shares of X that is priced at $10.50. While Order 1 is resting on the Exchange Book, Participant B enters Order 2, which this time is a Non-Displayed Order to sell 200 shares at $10.00. CMO functionality would activate for Order 1 both because Order 2 is larger than Order 1 and because Order 2 is priced at the far side of the NBBO. The System would resubmit Order 1 as Order 3, priced at $10.50. Order 3 would then execute at $10.00, again providing Participant A with price improvement relative to the prevailing midpoint price. The Exchange states it would permit Participant A to receive the benefit of Order 2, which is priced aggressively at the far side of the NBBO, even though Order 2 is a non-displayed Order that would not shift the NBBO or the midpoint.[23]

Additionally, the Exchange states that because a CMO inherently possesses the Midpoint Pegging Attribute, it will behave in accordance with Rule 3301B(d), which governs Orders with Midpoint Pegging.[24] According to the Exchange, a user may enter a CMO (and a CMO+PO) using RASH or OUCH or FIX.[25] Unlike other Orders with the Midpoint Pegging Attribute, however, CMOs cannot be assigned a Routing Attribute, such that provisions of the Midpoint Pegging Rule that govern Midpoint Pegged Orders with Routing do not apply to CMOs.[26] The Exchange states that a CMO will not be accepted outside of Market Hours, and a CMO remaining unexecuted at the end of Market Hours will be cancelled by the System.[27] Further, the Exchange states that the System will cancel CMOs when a trading halt is declared, and the System will reject any CMOs entered during a trading halt.[28]

A CMO user may opt to apply the Minimum Quantity, Trade Now, or Discretion Order Attributes and a Time-In-Force to a CMO.[29] The Exchange states that CMO+PO will possess all the characteristics and attributes of a CMO, as well as those of a Managed Midpoint Peg Post-Only Order, as set forth in Rule 3301A(b)(6), with certain exceptions.[30] Like a Midpoint Peg Post-Only Order, a CMO+PO is a Non-Displayed Order that is priced at the Midpoint and executes upon entry only in circumstances where economically beneficial to the party entering the Order, and the price of the CMO+PO will be updated repeatedly to equal the midpoint between the NBBO, provided, however, that the CMO+PO will not be priced higher (lower) than its limit price.[31] According to the Exchange, if the Midpoint between the NBBO becomes higher than (lower than) the limit price of a CMO+PO to buy (sell), the price of the CMO+PO will stop updating and the CMO+PO will post (with a Non-Display Attribute) at its limit price, but will resume updating if the Midpoint becomes lower than (higher than) the limit price of the CMO+PO to buy (sell).[32] Similarly, if a CMO+PO is on the Exchange Book and subsequently the NBBO is crossed, or if there is no NBBO, the Order will be removed from the Exchange Book and will be re-entered at the new Midpoint once there is a valid NBBO that is not crossed.[33] The Exchange states that CMO+PO receives a new timestamp each time its price is changed, and CMO+POs will be cancelled if they remain on the Exchange Book at the end of Market Hours.[34]

The Exchange states that CMO and CMO+PO executions will be reported to Securities Information Processors and provided in the Exchange's proprietary data feed without any new or special indication.[35] Further, as part of the surveillance the Exchange currently performs, CMOs and CMO+POs will be subject to real-time surveillance to determine if they are being abused by market participants.[36] The Exchange states that it plans to implement CMO and CMO+PO within thirty days after Commission approval of the proposal and will make the CMO and CMO+PO available to all members and to all securities upon implementation.[37] The Exchange plans to propose a fee structure for the CMO and CMO+PO in a subsequent Commission rule filing.[38]

II. Proceedings To Determine Whether To Approve or Disapprove SR–PHLX–2023–40, as Modified by Partial Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act[39] to determine whether the proposed rule change, as modified by partial Amendment No.1, should be approved or disapproved.

[22] *See id.* at 62130–31.

[23] *See* PHLX Response Letter, *supra* note 7, at 7. The Exchange further states there also may be scenarios where use of CMO might not ultimately benefit market participants, such as where the amount of price improvement associated with use of CMO is outweighed by the fee a participant would incur when its CMO is deemed to remove liquidity from the Exchange Book. *See* Notice, *supra* note 4, at 62131 n.10.

[24] *See* Notice, *supra* note 4, at 62131.

[25] *See* PHLX Response Letter, *supra* note 7, at 7–8.

[26] *See* Notice, *supra* note 4, at 62131.

[27] *See id.*

[28] *See id.* In addition, the Exchange also proposes to amend the Exchange's Rule governing Midpoint Pegging, at Rule 3301B(d), to add language stating that ''Orders with Midpoint Pegging will be cancelled by the System when a trading halt is declared, and any Orders with Midpoint Pegging entered during a trading halt will be rejected.'' The Exchange states that such language exists in a corresponding rule of the rulebook of the Exchange's sister exchange, the Nasdaq Stock Market, LLC (Nasdaq Rule 4703(d)), but was mistakenly omitted from Rule 3301B(d). *See id.* at 62131 n.13.

[29] *See id.* at 62131.

[30] *See id.*

[31] *See id.* Also like a Midpoint Peg Post-Only Order, a CMO+PO may not possess the Discretion or Routing Order Attributes, and a CMO+PO must be priced at more than $1 per share. *See id.*

[32] *See id.*

[33] *See id.*

[34] *See id.* According to the Exchange, CMO+PO entered prior to the beginning of Market Hours will be rejected, and a CMO+PO will be cancelled by the System when a trading halt is declared, and any CMO+PO entered during a trading halt will be rejected. *See id.* at 62131 n.14.

[35] *See id.* at 62132.

[36] *See id.* The Exchange states that it is committed to determining whether there is opportunity or prevalence of behavior that is inconsistent with normal risk management behavior. The Exchange further states that manipulative abuse is subject to potential disciplinary action under the Exchange's Rules, and other behavior that is not necessarily manipulative but nonetheless frustrates the purposes of the CMO or CMO+PO may be subject to penalties or other participant requirements to discourage such behavior, should it occur. *See id.* In addition, the Exchange states punitive fees or other participant requirements tied to CMO and CMO+PO usage will be implemented by rule filing under section 19(b) of the Act, 15 U.S.C. 78s(b), should the Exchange determine that they are necessary to maintain a fair and orderly market. *See id.* at 62132 n.15.

[37] *See id.* at 62132. The Exchange states it will announce the implementation date by Equity Trader Alert. *See id.*

[38] *See id.* at 62132 n.16.

[39] 15 U.S.C. 78s(b)(2)(B).

Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change and the comments received thereon. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as modified by partial Amendment No. 1, to inform the Commission's analysis of whether to approve or disapprove the proposed rule change, as modified by partial Amendment No. 1.

Pursuant to section 19(b)(2)(B) of the Act,[40] the Commission is providing notice of the grounds for possible disapproval under consideration. As noted above, the Commission received three comments on the proposal and the Exchange simultaneously filed a response to comments along with partial Amendment No. 1.[41] Of note, one commenter raises unfair discrimination concerns, stating that the commenter is not aware of another exchange order type that would discriminate against orders to access liquidity in the specific way the CMO and CMO+PO order types do and that CMO would introduce a new form of segmentation without any indication that investors would stand to benefit.[42] Another commenter states that it is troubled by the asymmetric information provided to the CMO order sender, as non-public information is provided to the CMO order sender when the CMO order is removed that no other participant will have.[43] Similarly, another commenter states that CMO provides ample opportunities for information leakage, particularly when a user is able to detect the presence of a large order by observing executions on the exchange while the CMO order is on the order book.[44]

The Exchange replied to these comments with its own comment letter and by filing partial Amendment No. 1.[45] The Exchange states, among other things, that CMO is not intended to benefit market makers at the expense of large incoming institutional investors' orders, and instead, it is designed to encourage market participants, including institutional investors, to rest and seek midpoint liquidity on the Exchange, rather than off-exchange, by reducing the probability of trading when market prices are likely to shift.[46] The Exchange further states that there is ample precedent for order types like CMO.[47] The Exchange refutes the comments that it would be novel for the exchange to alter orders without sending corresponding messages of such alterations.[48] Further, the Exchange states that precedents exists for the Commission permitting an exchange to utilize proprietary data to determine the behavior of one of its order types.[49] Regarding the information leakage concerns, the Exchange states that when the CMO fails execute, it does not reveal the details of the incoming order, including its size, its time-in-force, or whether the order is still available after the trade, and any information to be gleaned from this scenario would be knowable to all market participants at the time it is published on the SIP and the other market data feeds.[50] Therefore, the Exchange states CMO user would have no information advantage over the rest of the market.[51]

The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal, as modified by partial Amendment No. 1, with sections 6(b)(5)[52] and 6(b)(8) of the Exchange Act.[53] section 6(b)(5) of the Exchange Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. section 6(b)(8) of the Exchange Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with sections 6(b)(5) and section 6(b)(8), or any other provision of the Exchange Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[54]

[40] *Id.*

[41] *See supra* note 7.

[42] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, dated September 28, 2023 (''IEX Letter'') at 2–3.

[43] *See* Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, dated November 17, 2023 at 2. This commenter states that the originator of the CMO order knows that the contra side order is larger than the CMO order because trades occurred that would have executed against the resting CMO order had the size of the contra side order been equal to or smaller than the resting CMO order's size. *See id.* The commenter expresses concern that CMO order sender could discern that the opposing, unexecuted order exists, and profit from that information without the need to trade with it. *See id. See also* Letter from Joseph Saluzzi, Partner, Themis Trading LLC, dated September 29, 2023 at 2 (stating that the Exchange needs to provide a more detailed explanation of how it plans on removing CMO orders without leaking information, as according to the commenter, the originator of the CMO order is still going to need to be notified that its order was removed).

[44] *See* IEX Letter at 3–4. The commenter provides the following example where a CMO to buy 100 shares is resting at the midpoint, when the NBBO for that stock is at $10.00–$11.00. If the exchange reports an execution, to which the user is not a party, for 100 shares at $10.00, the CMO user can deduce that an order in that symbol larger than its own has arrived (otherwise, it would have traded with the order). It can also compare the size of the execution to the size of its CMO order to determine that the order has a remaining size that has not been executed on the exchange. The commenter further states that the user will receive this information as quickly as it could have received a cancelation message and that this is information that no other participant is in a position to have (other than possibly another CMO user with an order in the same symbol at the same time). *See id.*

[45] *See* PHLX Response Letter, *supra* note 7, at 2.

[46] *See id.* at 1.

[47] *See id.* at 1–2 (stating, as an example, that minimum quantity orders also enable users to avoid trading with incoming orders when they are too small and NYSE Arca Inc.'s Passive Liquidity Select Order, which the Commission approved, did not interact with an incoming order that was larger than the size of the Passive Liquidity Select Order). The commenter also states that IEX's D-Limit and D-Peg order types avoid trading when its system believes that market prices will shift via a complex formula that attempts to predict pending price movements. *See id.* at 1.

[48] *See id.* at 3 (stating that the Commission already permits the Exchange and Nasdaq to engage in the same process of informal order removal and resubmission without dissemination of cancellation messages, for example, in handling Managed Midpoint Peg Post-Only Orders and Midpoint Extended Life Order and Imbalance-Only order types).

[49] *See id.* at 3 (providing examples of Nasdaq's late Limit on Close and Imbalance-Only order types).

[50] *See id.*

[51] *See id.*

[52] 15 U.S.C. 78f(b)(5).

[53] 15 U.S.C. 78f(b)(8).

[54] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by January 2, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 16, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PHLX–2023–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PHLX–2023–40. 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–PHLX–2023–40 and should be submitted on or before January 2, 2024. Rebuttal comments should be submitted by January 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27064 Filed 12–8–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20012 and #20013; New York Disaster Number NY–20000]

Administrative Declaration of a Disaster for the State of New York

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 12/04/2023.

Incident: Severe Storms and Flooding.

Incident Period: 09/28/2023 through 09/30/2023.

DATES: Issued on 12/04/2023.

Physical Loan Application Deadline Date: 02/02/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 09/04/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kings, Nassau

Contiguous Counties:

New York: New York, Queens, Richmond, Suffolk

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 200126 and for economic injury is 200130.

The States which received an EIDL Declaration are Connecticut, New Jersey, New York.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–27054 Filed 12–8–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2020–0488]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Survey of Unmanned-Aircraft-Systems Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 02, 2022. The collection involves a survey of uncrewed-aircraft-systems (UAS) operators within the United States. The information gathered through the survey's questionnaire on flight behavior and fleet characteristics is used to inform UAS rule making and

Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[55] 17 CFR 200.30–3(a)(57).

guide investment in UAS research and infrastructure.

DATES: Written comments should be submitted by January 11th, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: William Ekins by email at: *X9-APO-Surveys@faa.gov;* phone: (202) 267–4735.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0797.

Title: Survey of Unmanned-Aircraft-Systems Operators.

Form Numbers: 1 Online Questionnaire per Respondent.

Type of Review: The review is for the renewal of the Survey of Unmanned-Aircraft-Systems Operators.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 02, 2023 (88 FR 67862).

We conducted the Survey of UAS Operators for 2021 and 2022 UAS activity under the original information collection request granted in March of 2021. These surveys utilized a stratified random sampling design with the operator's county of residence and type of operator as strata. The survey collected information through a questionnaire with 76 questions, but due to the skip logic of the questionnaire, the average respondent only answered 16 questions. The 2021 and 2022 activity surveys received 17,736 and 22,846 responses, respectively. The information from these surveys have been used to improve the questionnaire and inform rule making.

This request to modify and renew the information collection is to continue and improve the support of the FAA's mission of safety and aligns with Title 49 of the United States Code. The objective of this collection is to improve the FAA knowledge of UAS operations and better predict the nature of UAS operations within the national airspace system (NAS). The information gathered empowers the FAA to make informed decisions surrounding UAS operations within the NAS.

This information collection renewal asks to improve the survey design by expanding the target population and adding an additional stratum to the sampling process. The original survey's target population included only registered small UAS operators—operators with UAS weighing less than 55 lbs—within the United States. The survey under the renewed information collection would expand the target population to include all UAS, regardless of weight, by including UAS operators with a section 44807 exemption, which utilizes the aircraft registry under section 44103 as a sample frame. In addition, data collected from the 2021 and 2022 UAS activity surveys suggested that operators with UAS larger fleets have more diverse UAS activity than UAS operators with small fleets, who are most of the section 349 and part 107 registries. To improve the sampling of UAS operators, operators with larger fleets with receive equal sampling to UAS operators with small fleets by adding a fleet-size stratum to the sampling process when a registry contains information on the size of the fleet, such as the part 107 registry.

Selected registrants are invited to complete a questionnaire regarding the operator's fleet characteristics, flight behavior, and overall UAS activities. The survey's questionnaire contains over 80 questions, but due to skip logic, the average respondent will only answer 18 questions. We estimate the questionnaire requires 10 minutes on average to complete. Responding to the survey is voluntary, and respondents are given the option of opting out of just the current year's survey or all future surveys. All collected data are anonymized and only aggregated data are reported, thereby protecting the identity of the respondents. The survey will open in November of the year for which the UAS activity is gathered and close on February 1st of the following year.

Due to the changing nomenclature of this section of aviation, we request to change the name of the survey for the Survey of Unmanned-Aircraft-Systems Operators to the Survey of Uncrewed-Aircraft-Systems Operators.

Respondents: We expect approximately 113,000 respondents from across the United States over the three-years authorization of this information collection. The collection's sample is formed from three registries of UAS operators: (1) the registry of small, non-recreational operators under Title 14, Part 107 of the Code of Federal Regulation, (2) the registry of small, recreational operators under Section 349 of the FAA Reauthorization Act of 2018; and (3) the commercial operators with section 44807 exemptions who are registered in the aircraft registry under Title 49 of the U.S.C., section 44103 registry.

Frequency: Annually.

Estimated Average Burden per Response: 10 Minutes.

Estimated Total Annual Burden: 6,279 hrs/yr.

Issued in Washington, DC, on December 6th, 2023.

William Ekins,

Economist, Federal Aviation Administration, Office of Aviation Policy and Plans.

[FR Doc. 2023–27056 Filed 12–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Environmental Assessment for Proposed Settlement Agreement Departure Procedure Amendments for Bob Hope ''Hollywood Burbank'' Airport

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Public comment period for the FAA's Draft Environmental Assessment.

SUMMARY: The FAA announces the release of the Draft Environmental Assessment (EA) for proposed departure procedure amendments at Bob Hope ''Hollywood Burbank'' Airport (BUR Airport). The FAA has prepared the Draft EA to evaluate the potential environmental impacts of the FAA adopting new procedures for Runway 15 departures at BUR Airport. If implemented, the Proposed Action (Alternative A) is intended to maintain the safety and efficiency of the National Airspace System (NAS) while meeting the terms of a settlement agreement that the FAA entered with local homeowners' associations, which requires consideration of alternative procedures. The FAA also evaluated proposed amendments put forth by the Southern San Fernando Valley Airplane Noise Task Force for BUR Airport (Alternative B).

DATES: The Draft EA is available for public review beginning on December

11, 2023, and comments can be submitted on or before January 24, 2024.

ADDRESSES: Comments can be submitted by email to *9-AJO-BUR-Community-Involvement@FAA.GOV* or by mail to Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 216th Street, Des Moines, WA 98198. Under FAA Order 1050.1F, 6–2.2(g), Public Comments on a Draft EA, the ''FAA or applicant must publish a notice of the draft EA's availability in local newspapers, other media, and/or on the internet. This notice must include the following statement: Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.''

FOR FURTHER INFORMATION CONTACT: Lonnie D. Covalt, Operations Support Group, Western Service Center, 2200 216th Street, Des Moines, WA 98198; telephone 206–231–3998, email *9-AJO-BUR-Community-Involvement@FAA.GOV*.

SUPPLEMENTARY INFORMATION: The Draft EA was prepared in accordance with the settlement agreement between the Benedict Hills Homeowners Association, Benedict Hills Estates Association, and the FAA (''Settlement Agreement'') to assess potential environmental impacts in connection with proposed amendments to the OROSZ and SLAPP departure procedures at BUR Airport. In addition to the No Action Alternative, where current procedures at BUR Airport would continue to be utilized, the FAA is considering two additional alternatives.

The first alternative (Alternative A) was developed in accordance with the Settlement Agreement and would result in the amendment of existing flight procedures to create two Open Standard Instrument Departure (SID) procedures, the SLAPP THREE DEPARTURE (Area Navigation [RNAV]) (''SLAPP THREE'') and the OROSZ THREE DEPARTURE (RNAV) (''OROSZ THREE'') procedure.

The second alternative (Alternative B) is comprised of the modification of the current SLAPP TWO DEPARTURE (RNAV) (''SLAPP TWO'') and OROSZ TWO DEPARTURE (RNAV) (''OROSZ TWO'') procedures to require a higher climb gradient. Alternative B was developed in accordance with recommendations set forth by a separate community stakeholder, the Southern San Fernando Valley Airplane Noise Task Force, to reduce noise over communities in southern San Fernando Valley.

The Draft EA is available upon request by contacting Operation Support Group, Western Service Center, Federal Aviation Administration, 2200 216th Street, Des Moines, WA 98198; telephone (206) 231–2286. The Draft EA is also available on the FAA website at: *https://www.faa.gov/air_traffic/community_engagement/bur.*

Issued in Des Moines, WA, on December 5, 2023.

Lonnie D. Covalt,

Lead Environmental Protection Specialist, Operations Support Group, Western Service Center.

[FR Doc. 2023–27143 Filed 12–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2023–0031]

Agency Information Collection Activity Under OMB Review: Public Transportation Safety Program

AGENCY: Federal Transit Administration, Department of Transportation (DOT).

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens for the Public Transportation Safety Program.

DATES: Comments must be submitted on or before January 10, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* You can 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: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility, the accuracy of the Department's estimate of the burden of the proposed information collection: 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 respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Ave. SE, Mail Stop TAD–10, Washington, DC 20590; (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On July 6, 2023, FTA published a 60-day notice (88 FR 43167) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c). Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Public Transportation Safety Program.

OMB Control Number: 2132–New Information Collection.

Background: Congress directed FTA to establish a comprehensive Public Transportation Safety Program in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141; July 6, 2012) (MAP–21), which was reauthorized by the Fixing America's Surface Transportation Act (Pub. L. 114–94; December 4, 2015). The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58; November 15, 2021), continues FTA's authority to regulate public transportation systems that receive Federal financial assistance under chapter 53. Section 5329(f) of Title 49 U.S.C. authorizes FTA to ''require the production of documents by, and prescribe recordkeeping and reporting requirements for, a recipient or a State safety oversight agency'' for the purposes of carrying out the Federal Public Transportation Safety Program. FTA is seeking approval of an information collection that will allow FTA to collect safety related data from transit agencies, State Safety Oversight Agencies (SSOAs), and States. FTA will use this information collection to assess how recipients of Federal financial assistance under chapter 53 are complying with FTA safety requirements and recommendations and ensuring safe transportation systems for the riders and patrons using each system, the workers operating each system, and the pedestrians interacting with each system. FTA may also use this collection to assist in determining whether there is a need for new or revised safety requirements. This collection is different from the existing safety related collections associated with the Public Transportation Agency Safety Plan Program (2132–0580), the Public Transportation Safety Certification Training Program (2132–0578), and the State Safety Oversight Program (2132–0558). The aforementioned collections are approved to collect information related to the requirements of those safety programs while this new collection is intended to cover other safety issues, including emerging safety concerns.

The information captured through this data collection will enable FTA to respond to existing safety issues and be proactive to address potential and emerging safety concerns. This information collection is essential to FTA's safety oversight and grant-making roles—both critical to the Agency's mission of improving public transportation for America's communities.

Respondents: Transit agencies, State safety oversight agencies, and States.

Estimated Annual Number of Respondents: 2,477.

Estimated Annual Number of Responses: 4,843.

Estimated Total Annual Burden: 146,940.

Frequency: Periodic.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2023–27075 Filed 12–8–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2023–0174]

Notice of Establishment of Aerospace Supply Chain Resiliency Task Force

AGENCY: Office of the Under Secretary for Transportation Policy, Department of Transportation (DOT).

ACTION: Notice of the establishment of the Aerospace Supply Chain Resiliency (ASCR) Task Force.

SUMMARY: DOT is announcing the establishment of the ASCR Task Force. The ASCR Task Force is required by section 106 of the Consolidated Appropriations Act of 2023, enacted December 29, 2022. This notice outlines DOT's plan for implementation of this Task Force, including the dates of Task Force meetings. DOT will publish any future updates on the DOT web page. See further details within the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The ASCR Task Force is established on the date of publication of this **Federal Register** Notice and will end when the Task Force submits its report to Congress.

ADDRESSES: The four official meetings of the Task Force will take place in person at U.S. DOT Headquarters, 1200 New Jersey Avenue SE, Washington, DC 20590. See Section 6 for further information about the schedule, location, and nature of the Task Force meetings.

FOR FURTHER INFORMATION CONTACT: Elliott Black, Facilitator, ASCR Task Force, Office of the Under Secretary for Transportation Policy, at (202) 924–0588 or email *elliott.black1@dot.gov.*

SUPPLEMENTARY INFORMATION: DOT is hereby announcing the establishment of a new Aerospace Supply Chain Resiliency (ASCR) Task Force. The ASCR Task Force is required by Section 106 of the Consolidated Appropriations Act of 2023 (Pub. L. 117–328), enacted December 29, 2022. This notice outlines DOT's plan for implementation of this Task Force, including the dates of Task Force meetings.

The remainder of this notice includes:

1. Summary of statutory requirements (including the scope and purpose of the new Task Force).
2. Structure and composition of the Task Force.
3. Opportunities for others to provide input to the Task Force.
4. Proceedings, records, and nature of the required reports.
5. Relationship to other initiatives.
6. Schedule, location, and nature of the Task Force meetings.
7. Other Information.

1. Summary of Statutory Requirements

The statute established the purpose of the Task Force as to ''Identify and assess risks to United States aerospace supply chains, including the availability of raw materials and critical manufactured goods, with respect to major end items produced by the aerospace industry; and the infrastructure of the National Airspace System; and identify best practices and make recommendations to mitigate those risks and support a robust United States aerospace supply chain.''

Accordingly, DOT has established the Task Force as required by the statute, to focus on the scope as set forth in statute. DOT will facilitate the Task Force and encourage all members to consider both current and emerging issues, including issues driven by new and evolving technologies as well as other external factors and trends.

The statute also established the maximum size of the Task Force, and a minimum list of required disciplines to be represented. Please see Section 2 (''Structure and composition of the Task Force'') for further information.

The statute also established several schedule requirements. Please see Section 5 (''Schedule, location, and nature of the Task Force meetings'') for further information.

The statute specifically exempted the Task Force from the Federal Advisory Committee Act (FACA). Accordingly, this Notice describes the parameters by which the Task Force will function.

2. Structure and Composition of the Task Force

The statute outlined 16 specific industry perspectives that must be represented, including six manufacturing categories, six operational categories, and four labor categories. The statute requires the Secretary to appoint ''Individuals with

expertise in logistics, economics, supply chain management, or another field or discipline related to the resilience of industrial supply chains.''

The members of the Task Force are listed below, including both primary representatives and alternate representatives in case any primary representative is unavailable to participate in one or more of the Task Force meetings:

- Sarah MacLeod, Primary member (Christian Klein, alternate), Aeronautical Repair Station Association (ARSA).
- Dak Hardwick, Primary member (Di Reimold, alternate), Aerospace Industries Association (AIA).
- Carey Fagan, Primary member (Rugger Smith, alternate), Air Traffic Control Association (ATCA).
- Richard (Ric) Peri, Primary member (Mike Adamson, alternate), Aircraft Electronics Association (AEA).
- James (''Jim'') Coon, Primary member (Murray Huling, alternate), Aircraft Owners and Pilots Association (AOPA).
- Bob Ireland, Primary member (Justin Madden, alternate), Airlines for America (A4A).
- Michael Robbins, Primary member (Max Rosen, alternate), Association for Uncrewed Vehicle Systems International (AUVSI).
- Isaiah Wonnenberg, Primary member (Mary Guenther, alternate), Commercial Spaceflight Federation (CSF).
- Hassan Shahidi, Primary member (Deborah Kirkman, alternate), Flight Safety Foundation (FSF).
- Paul Feldman, Primary member (Joe Sambiase, alternate), General Aviation Manufacturers Association (GAMA).
- John Shea, Primary member (Christopher Martino, alternate), Helicopter Association International (HAI).
- Jody Bennett, Primary member, International Association of Machinists and Aerospace Workers (IAMAW).
- Richard Plunkett, Primary member (Brandon Anderson, alternate), International Federation of Professional and Technical Engineers (IFPTE)/ Society of Professional Engineering Employees in Aerospace (SPEEA).
- Ken Thompson, Primary member (Keith DeBerry, alternate), National Air Transportation Association (NATA).
- Sierra Grimes, Primary member (Doug Carr, alternate), National Business Aviation Association (NBAA).
- David Spero, Primary member (Carlos Aguirre, alternate), Professional Aviation Safety Specialists (PASS).
- Gary Peterson, Primary member (Mark Erler, alternate), Transport Workers Union of America (TWU).

3. Opportunities for Others To Provide Input to the Task Force

DOT recognizes that there may be other organizations and individuals who would like to provide input for consideration by the Task Force. Each meeting will include a public session where stakeholders may provide such input. In addition, interested parties may submit input in writing by following the instructions that DOT has published at *https://www.transportation.gov/ASCR.*

4. Proceedings, Records, and Nature of the Required Reports

Based on the statutory provisions, the Task Force must submit its Report to Congress within one year of the first meeting of the Task Force. The Task Force Report to Congress shall be an independent report, not subject to DOT review or approval.

Therefore, DOT will facilitate the Task Force proceedings with a focus on ensuring a balanced and harmonious process, and providing a safe environment for open dialogue and full consideration of all perspectives (including addressing input provided by other interested parties). If there are areas in which the Task Force cannot come to consensus, DOT will encourage the Task Force to report more than a single perspective for Congressional consideration.

DOT will conduct the closed-door portion of Task Force meetings according to Chatham House rules, which stipulate that the proceedings are not to be recorded or reported externally in any form. Members of the Task Force agree not to disclose the internal proceedings or to attribute any particular viewpoint to any members of the Task Force. Members of the Task Force will be required to sign Nondisclosure Agreements. The purpose of this approach is to ensure a safe environment in which all Members of the Task Force may speak freely and openly, without fear of external disclosure.

Likewise, DOT does not intend to record or create detailed minutes, notes, or other official records of the proceedings, including either the public sessions or the closed-door sessions. Rather, each Member of the Task Force shall bear the responsibility to keep their own individual notes or records as necessary to help them formulate and prepare the Task Force Report to Congress.

Based on the statutory provisions, DOT must then submit a separate Report to Congress, within 180 days of the Task Force report, regarding the status or implementation of recommendations of the Task Force.

DOT will post copies of both reports on the website at *https://www.transportation.gov/ASCR.*

5. Relationship to Other Related Initiatives

DOT acknowledges that other task forces and other bodies have been established to examine supply-chain issues, including joint reviews and reports conducted in response to Executive Order 14017 (entitled ''America's Supply Chains'') as well as other task forces, councils, and working groups established by other Federal agencies, industry associations, and other stakeholders.

DOT will review prior reports and analyses to identify issues that may need further examination in the particular context of the United States' aerospace industry. DOT will include such issues on the agenda for the initial meeting of the Task Force, and engage with Task Force members as well as other interested parties to consider the challenges and potential mitigation measures.

6. Schedule, Location, and Nature of the Task Force Meetings

The official meetings of the Task Force will take place in person at DOT Headquarters in Washington, DC. Each meeting will include a public session and a closed-door session. DOT may convene additional closed-door meetings or working sessions as necessary.

Parties interested in attending and/or speaking at any of the public sessions must register at least seven (7) business days in advance by following the instructions posted at *https://www.transportation.gov/ASCR.*

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section at least thirty (30) business days in advance of each meeting.

The meetings will take place on the following dates:

- *First meeting:* Wednesday and Thursday, January 10–11, 2024 (with the public session taking place on Wednesday, January 10, 2024, from 10:00 a.m. to 12:00 p.m. Eastern time).
- *Second meeting:* Wednesday and Thursday, April 3–4, 2024 (with the public portion of the meeting taking place on Wednesday, April 3, 2024,

from 10:00 a.m. to 12:00 p.m. Eastern time).

• *Third meeting:* Wednesday and Thursday, June 26–27, 2024 (with the public session taking place on Wednesday, June 26, 2024, from 10:00 a.m. to 12:00 p.m. Eastern time).

• *Fourth and final meeting:* Wednesday and Thursday, September 18–19, 2024 (with the public portion of the meeting taking place on Wednesday, September 18, 2024, from 10:00 a.m. to 12:00 p.m. Eastern time).

DOT does not anticipate publishing any further notices or information about this Task Force in the **Federal Register**. DOT will post any further information on the Task Force website at *https://www.transportation.gov/ASCR.*

Signed in Washington, DC.

Brian Elliott Black,

Facilitator, Aerospace Supply Chain Resiliency Task Force, Office of the Under Secretary, U.S. Department of Transportation.

[FR Doc. 2023–27085 Filed 12–8–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for Financial Assistance (FA) or Technical Assistance (TA) awards under the Community Development Financial Institutions Program (CDFI Program) fiscal year (FY) 2024 Funding Round.

Funding Opportunity Number: CDFI–2024–FATA.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

DATES:

TABLE 1—FY 2024 CDFI PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Submission method
Last day to create an AMIS Account (all Applicants)	January 16, 2024	11:59 p.m. ET	AMIS.
Last day to enter Employer Identification Number (EIN) and Unique Entity Identifier (UEI) in AMIS (all Applicants).	January 16, 2024	11:59 p.m. ET	AMIS.
Last day to submit SF–424 Mandatory Form (Application for Federal Assistance).	January 16, 2024	11:59 p.m. ET	Electronically via *Grants.gov.*
Last day to contact CDFI Program staff	February 13, 2024	5:00 p.m. ET	Service Request via AMIS Or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only).	February 15, 2024	5:00 p.m. ET	Service Request via AMIS Or 202–653–0422 Or *AMIS@cdfi.treas.gov.*
Last day to submit Title VI Compliance Worksheet (all Applicants) [1].	February 15, 2024	11:59 p.m. ET	AMIS.
Last day to submit CDFI Program Application for Financial Assistance (FA) or Technical Assistance (TA).	February 15, 2024	11:59 p.m. ET	AMIS.
Last day to contact Certification, Compliance Monitoring and Evaluation (CCME) Help Desk regarding CDFI Certification Application for uncertified FA Applicants.	March 1, 2024	11:59 p.m. ET	Service Request [2] via the Awards Management Information System (AMIS).
Last day to submit CDFI Certification Applications for uncertified FA Applicants.	March 5, 2024	11:59 p.m. ET	AMIS.

Executive Summary: Through the CDFI Program, the CDFI Fund provides (i) FA awards of up to $2 million to Certified Community Development Financial Institutions (CDFIs) to build their financial capacity to lend to Eligible Markets and/or their Target Markets, and (ii) TA awards of up to $250,000 to build Certified and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets. All awards provided through this NOFA are subject to funding availability.

I. Program Description

A. History: The CDFI Fund was established by the Riegle Community Development Banking and Financial Institutions Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. The CDFI Program made its first awards in 1996 and the Native American CDFI Assistance (NACA) Program made its first awards in 2002.

B. Priorities: Through the CDFI Program's FA and TA awards, the CDFI Fund invests in and builds the capacity of for-profit and non-profit community based lending organizations known as CDFIs. These organizations, Certified as CDFIs by the CDFI Fund, serve rural and urban Low-Income people, and communities across the nation that lack adequate access to affordable Financial Products and Financial Services.

C. Authorizing Statutes and Regulations: The CDFI Program is authorized by the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325, 12 U.S.C. 4701 *et seq.*) (Authorizing Statute). The regulations governing the CDFI Program are found at 12 CFR parts 1805 and 1815 (the Regulations) and set forth evaluation criteria and other program requirements. The CDFI Fund encourages Applicants to review the Regulations; this NOFA; the CDFI Program Application for Financial Assistance or Technical Assistance (the Application); all related materials and guidance documents found on the CDFI Fund's website (Application materials); and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury's codification of the Office of Management and Budget (OMB) government-wide framework for grants management at 2 CFR part 200 (the Uniform Requirements) for a complete understanding of the program. Capitalized terms in this NOFA are defined in the Authorizing Statute, the Regulations, this NOFA, the Application, Application materials, or the Uniform Requirements. Details regarding Application content requirements are found in the Application and Application materials.

[1] This requirement also applies to Applicants' prospective sub-recipients that are not direct beneficiaries of Federal financial assistance (e.g., Depository Institution Holding Companies and their Subsidiary CDFI Insured Depository Institutions).

[2] Service Request shall mean a written inquiry or notification submitted to the CDFI Fund via AMIS.

D. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000): The Uniform Requirements codify financial, administrative, procurement, and program management standards that Federal award agencies must follow. When evaluating Applications, awarding agencies must evaluate the risks posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, the soundness of its business plan, history of performance, ability to achieve measurable impacts through its products and services, and audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award compliance requirements for Recipients.

E. Funding limitations: The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA.

II. Federal Award Information

A. Funding Availability:

1. FY 2024 Funding Round: Subject to final appropriations, the CDFI Fund expects to award, through this NOFA, approximately $412 million as indicated in the following table:

TABLE 2—FY 2024 FUNDING ROUND ANTICIPATED CATEGORY AMOUNTS

Funding categories (see definition in Table 7 for TA or Table 8 for FA)	Estimated total amount to be awarded (millions) FY 2024	Award amount		Estimated number of awards FY 2024	Estimated average amount to be awarded FY 2024	Average amount awarded in FY 2022
		Minimum [3]	Maximum			
Base-FA: Category I/Small and/or Emerging CDFI Assistance (SECA).	$32.0	$125,000	$1,400,000	48	$667,000	$350,000
Base-FA: Category II/Core	210.2	$500,000, or if portfolio outstanding is less than $1,666,700 as of the most recent historic fiscal year end, then 30% of portfolio outstanding.	2,000,000	185	1,136,000	596,000
Persistent Poverty Counties—Financial Assistance (PPC–FA).	41.2	$100,000	600,000	137	301,000	128,000
Disability Funds—Financial Assistance (DF–FA)*.	20.0	$100,000	1,000,000	20	1,000,000	500,000
Healthy Food Financing Initiative—Financial Assistance (HFFI–FA)*.	48.0	$500,000	10,000,000	10	4,800,000	2,875,000
TA	60.6	$10,000	300,000	202	300,000	125,000
Total	412			602		

*DF–FA and HFFI–FA appropriation will be allocated in one competitive round between the NACA and CDFI Program NOFAs.

The CDFI Fund reserves the right to award more or less than the amounts cited above in each category, based upon available funding and other factors, as appropriate.

2. Funding Availability for the FY 2024 Funding Round: Funds for the FY 2024 Funding Round are a combination of appropriations from FY 2023 and FY 2024. FY 2023 funds were appropriated as part of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), but FY 2024 funds are subject to change based on passage of a final FY 2024 appropriations bill. If Congress does not appropriate funds for FY 2024, the award estimates set forth above may be reduced. If funds are appropriated for FY 2024, the amount of such funds may be greater or less than the amounts set forth above. The CDFI Fund reserves the right to contact Applicants to seek additional information in the event that final FY 2024 appropriations for the CDFI Program change any of the requirements of this NOFA. As of the date of this NOFA, the CDFI Fund is operating under a continuing funding resolution as enacted by the Further Continuing Appropriations and Other Extensions Act, 2024 (Pub. L. 118–22).DF–FA

3. Anticipated Start Date and Period of Performance: The Period of Performance for TA awards begins with the date of the award announcement and includes either (i) an Emerging CDFI Recipient's three full consecutive fiscal years after the date of the award announcement, or (ii) a Certified CDFI Recipient's two full consecutive fiscal years after the date of the award announcement, during which the Recipient must meet the Performance Goals and Measures (PG&Ms) set forth in the Assistance Agreement. The Period of Performance for FA awards begins with the date of the award announcement and includes a Recipient's three full consecutive fiscal years after the date of the award announcement, during which time the Recipient must meet the PG&Ms set forth in the Assistance Agreement.

B. Types of Awards: Through the CDFI Program, the CDFI Fund provides two types of awards: Financial Assistance (FA) and Technical Assistance (TA) awards. An Applicant may submit an Application for a TA award or an FA award under the CDFI Program, but not both. FA awards include the Base Financial Assistance (Base-FA) award and the following awards that are provided as a supplement to the Base-FA award: Healthy Food Financing Initiative-Financial Assistance (HFFI–FA), Persistent Poverty Counties—Financial Assistance (PPC–FA), and Disability Funds—Financial Assistance (DF–FA). There are two categories of Base-FA Applicants: Category I (SECA) and Category II (Core) (see definitions in Table 8). The HFFI–FA, PPC–FA, and DF–FA Applications will be evaluated independently from the Base-FA Application and will not affect the Base-FA Application evaluation or Base-FA award amount. However, Applicants that qualify for the NACA Program may submit two Applications: one Application (either for a TA award or an FA award, but not both) through the CDFI Program, and one Application (either for a TA award or an FA award, but not both) through the NACA Program. NACA qualified Applicants that choose to apply for awards through

[3] The FA Application Guidance defines ''the most recent historic fiscal year'' based on an Applicant's fiscal year end.

both the CDFI Program and the NACA Program may either apply for the same type of award under each Program or for a different type of award under each Program. NACA qualified FA Applicants that choose to apply for an FA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the FA award under the CDFI Program. NACA qualified TA Applicants that choose to apply for a TA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the TA award under the NACA Program. NACA qualified Applicants that choose to apply for a TA award and an FA award under separate programs and are selected for an award under both Programs will be provided the larger of the two awards. NACA Applicants cannot receive an award under both Programs within the same funding round.

Category II (Core) FA Applicants applying for Base-FA, PPC–FA, and/or DF–FA must provide evidence of acceptable Matching Funds [4] (see Table 9 for more information), except Native American CDFIs [5] applying under this NOFA, which are exempt from the Matching Funds requirement.[6] Native American CDFIs that qualify as a Category II (Core) FA Applicant are not required to submit Matching Funds for their award requests. Additionally, the Matching Funds requirement for HFFI–FA and SECA FA Applicants was waived in the enacted FY 2023 Consolidated Appropriations Act, and the final FY 2024 appropriations are still pending. Therefore, HFFI–FA and SECA FA Applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from SECA FA Applicants and/or HFFI–FA Applicants if Matching Funds are not waived in the final FY 2024 CDFI Program appropriations. TA Applicants are not required to provide Matching Funds.

1. Base-FA Awards: Base-FA awards can be in the form of loans, grants, Equity Investments, deposits, and credit union shares. The form of the Base-FA award is based on the form of the Matching Funds that the Applicant includes in its Application, unless Congress waived the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, the Base-FA award will be in the form of a grant for Native American CDFI Applicants. Matching Funds are required at the time of Application submission for Category II (Core) Applicants (except Native American CDFIs) applying for Base-FA awards, and the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) Applicants applying for Base FA awards if Matching Funds are not waived in the final FY 2024 appropriations for these Applicants. Matching Funds must be from non-Federal sources, and cannot have been used as Matching Funds for any other Federal award. The CDFI Fund reserves the right, in its sole discretion, to provide a Base-FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

2. Persistent Poverty Counties—Financial Assistance (PPC–FA) Awards: PPC–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that are selected to receive a Base-FA award through the CDFI Program FY 2024 Funding Round will be eligible to receive a PPC–FA award. PPC–FA awards can be in the form of loans, grants, Equity Investment, deposits, and credit union shares. The form of the PPC–FA award is based on the form of the Matching Funds that the Applicant includes in its Application, unless Congress waived the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, the PPC–FA award will be in the form of a grant for Native American CDFI Applicants. Matching Funds are required at the time of Application submission for Category II (Core) Applicants (except Native American CDFIs) applying for PPC–FA awards, and the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) Applicants applying for PPC–FA awards if Matching Funds are not waived in the final FY 2024 appropriations for these Applicants. Matching Funds must be from non-Federal sources, and cannot have been used as Matching Funds for any other Federal award. The CDFI Fund reserves the right, in its sole discretion, to provide a PPC–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

3. Disability Funds—Financial Assistance (DF–FA) Awards: DF–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the CDFI Program FY 2024 Funding Round will be eligible to receive a DF–FA award. DF–FA awards can be in the form of loans, grants, Equity Investments, deposits, and credit union shares. The form of the DF–FA award is based on the form of the Matching Funds that the Applicant includes in its Application unless Congress waived the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, the DF–FA award will be in the form of a grant to Native American CDFI Applicants. Matching Funds are required for Category II (Core) Applicants (except Native American CDFIs) applying for DF–FA awards, and the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) Applicants applying for PPC–FA awards if Matching Funds are not waived in the final FY 2024 appropriations for these Applicants. Matching Funds must be from non-Federal sources and cannot have been used as Matching Funds for any other Federal award. The CDFI Fund reserves the right, in its sole discretion, to provide a DF–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

4. Healthy Food Financing Initiative—Financial Assistance (HFFI–FA) Awards: HFFI–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the CDFI Program FY 2024 Funding Round will be eligible to receive an HFFI–FA award. HFFI–FA awards can be in the form of loans, grants, Equity Investments, deposits, and credit union shares. The form of the HFFI–FA award is based on the form of the Matching Funds that the Applicant includes in its Application unless Congress waived the Matching Funds requirement. The

[4] Matching Funds shall mean funds from sources other than the federal government as defined in accordance with the CDFI Program Regulations at 12 CFR 1805.500.

[5] A Native American CDFI (Native CDFI) is one that Primarily Serves a Native Community. Primarily Serves is defined as 50% or more of an Applicant's activities being directed to a Native Community. For purposes of this NOFA, a Native Community is defined as Native American, Alaska Native, or Native Hawaiian populations or Native American areas defined as federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau-designated Tribal Statistical Areas.

[6] The Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261) permanently waives the Matching Funds requirement for Native American CDFIs that receive Assistance from the CDFI Fund.

Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, HFFI–FA awards will be in the form of a grant to Native American CDFI Applicants. The Matching Funds requirement for HFFI–FA Applicants was waived in the final appropriations bill for FY 2023, and the final FY 2024 appropriations are still pending. As a result, HFFI–FA Applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from HFFI–FA Applicants if Matching Funds are not waived in the final FY 2024 CDFI Program appropriations. The CDFI Fund reserves the right, in its sole discretion, to provide an HFFI–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

5. TA Awards: TA is provided in the form of grants. The CDFI Fund reserves the right, in its sole discretion, to provide a TA award in an amount other than that which the Applicant requests; however, the TA award amount will not exceed the Applicant's request as stated in its Application.

C. Eligible Activities:

1. FA Awards: Base-FA, PPC–FA, DF–FA, and HFFI–FA award funds may be expended for activities serving Commercial Real Estate, Small Business, Microenterprise, Community Facilities, Consumer Financial Products, Consumer Financial Services, Commercial Financial Products, Commercial Financial Services, Affordable Housing, Intermediary Lending to Non-Profits and CDFIs, Climate-Centered Financing, and other lines of business as deemed appropriate by the CDFI Fund in the following five categories: (i) Financial Products; (ii) Financial Services; (iii) Loan Loss Reserves; (iv) Development Services; [7] and (v) Capital Reserves. The FA Budget is the amount of the award and must be expended in the five eligible activity categories prior to the end of the Budget Period.[8] None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Base-FA Recipients must meet PG&Ms, which will be derived from projections and attestations provided by the Applicant in its Application, to achieve one of the following FA Objectives: (i) Increase Volume of Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market and/or Increase Volume of Financial Services in an Eligible Market(s) and/or in the Applicant's approved Target Market; (ii) Serve Eligible Market(s) or the Applicant's approved Target Market in New Geographic Area or Areas; (iii) Provide New Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market; and (iv) Serve New Targeted Population or Populations. FA awards may only be used for Direct Costs associated with an eligible activity; no indirect expenses are allowed. Up to 15% of the FA award may be used for Direct Administrative Expenses associated with an eligible FA activity. ''Direct Administrative Expenses'' shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Requirements, which are incurred by the Recipient to carry out the Financial Assistance. Direct Costs incurred to provide Development Services or Financial Services do not constitute Direct Administrative Expenses.

The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements,[9] with respect to any Direct Costs. For purposes of this NOFA, the five eligible activity categories are defined in Table 3.

TABLE 3—BASE-FA, PPC–FA, DF–FA, AND HFFI–FA ELIGIBLE ACTIVITY CATEGORIES

FA eligible activity	FA eligible activity definition *	Eligible CDFI institution types
i. Financial Products	FA expended as loans, Equity Investments, and similar financing activities (as determined by the CDFI Fund) including the purchase of loans originated by Certified CDFIs and the provision of loan guarantees. In the case of CDFI Intermediaries, Financial Products may also include loans to CDFIs and/or Emerging CDFIs, and deposits in Insured Credit Union CDFIs, Emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs. For HFFI–FA, however, financing for prepared food outlets are not eligible activities, including the purchase of loans originated by Certified CDFIs, loan refinancing, or any other type of financing for prepared food outlets.	All.
ii. Financial Services ...	FA expended for providing checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services.	Regulated Institutions [10] only. Not applicable for HFFI-FA Recipients.
iii. Loan Loss Reserves	FA set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable or for related purposes that the CDFI Fund deems appropriate.	All.
iv. Development Services.	FA expended for activities undertaken by a CDFI, its Affiliate or contractor that (i) promote community development and (ii) prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services. For example, such activities include financial or credit counseling; homeownership counseling; business planning; and management assistance.	All.

[7] Although some financial education for youth under 18 years old do not fall under the definition of Development Services and thus is not eligible to support Certification, the CDFI Fund allows FA award funds to be used to provide such financial education. Financial education for youth means education designed to prepare youth to engage with the financial system. This includes accessing Financial Products when they are legally able to and accessing Financial Services offered by the Applicant or a third party.

[8] Budget Period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which Recipients are authorized to expend the funds awarded.

[9] § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any Subsidiary or Affiliate of such entities).

TABLE 3—BASE-FA, PPC–FA, DF–FA, AND HFFI–FA ELIGIBLE ACTIVITY CATEGORIES—Continued

FA eligible activity	FA eligible activity definition*	Eligible CDFI institution types
v. Capital Reserves	FA set aside as reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or providing financing, or for related purposes as the CDFI Fund deems appropriate.	Regulated Institutions only. Not applicable for DF–FA.

*All FA eligible activities must be in an Eligible Market or the Applicant's approved Target Market. Eligible Market is defined as (i) a geographic area meeting the requirements set forth in 12 CFR 1805.201(b)(3)(ii), or (ii) individuals that are Low-Income, African American, Hispanic, Native American, Native Hawaiian, Alaska Native, Other Pacific Islander, Filipino, Vietnamese, or Persons with Disabilities.

2. DF–FA Award: DF–FA award funds may only be expended for eligible FA activities (referenced in Table 3) to directly or indirectly benefit individuals with disabilities. The DF–FA Recipient must close Financial Products for the primary purpose of directly or indirectly benefiting people with disabilities, where the majority of the DF–FA supported loans or investments benefit individuals with disabilities, in an amount equal to or greater than 85% of the total DF–FA provided. Eligible DF–FA financing activities may include, among other activities, loans to develop or purchase affordable, accessible, and safe housing; loans to provide or facilitate employment opportunities; and loans to purchase assistive technology.

For the purposes of DF–FA, a person with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a record of such an impairment, or a person who is regarded as having such an impairment, as defined by the Americans with Disabilities Act (ADA), 42 U.S.C. 12102.

3. HFFI–FA Award: HFFI–FA award funds may only be expended for eligible FA activities referenced in Table 3. The HFFI–FA investments must comply with the following guidelines:

a. Recipient must close Financial Products for Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets in its approved Target Market in an amount equal to or greater than 100% of the total HFFI Financial Assistance provided. Eligible financing activities to Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets require that the majority of the loan or investment be devoted to offering a range of Healthy Food choices, which may include, among other activities, investments supporting an existing retail store or wholesale operation upgrade to offer an expanded range of Healthy Food choices, or supporting a nonprofit organization that expands the availability of Healthy Foods in underserved areas.

b. Recipient must demonstrate that it has closed Financial Products to Healthy Food Retail Outlets located in Food Deserts in the Recipient's approved Target Market in an amount equal to 75% of the total HFFI Financial Assistance provided.

Definitions:

Healthy Foods: Healthy Foods include unprepared nutrient-dense foods and beverages as set forth in the USDA Dietary Guidelines for Americans 2020–2025 including whole fruits and vegetables, whole grains, fat free or low-fat dairy foods, lean meats and poultry (fresh, refrigerated, frozen or canned). Healthy Foods should have low or no added sugars, and be low-sodium, reduced sodium, or no-salt-added. (See USDA Dietary Guidelines: *http://www.dietaryguidelines.gov*).

Healthy Food Retail Outlets: Commercial sellers of Healthy Foods including, but not limited to, grocery stores, mobile food retailers, farmers markets, retail cooperatives, corner stores, bodegas, stores that sell other food and non-food items along with a range of Healthy Foods.

Healthy Food Non-Retail Outlets: Wholesalers of Healthy Foods including, but not limited to, wholesale food outlets, wholesale cooperatives, or other non-retail food producers that supply for sale a range of Healthy Food options; entities that produce or distribute Healthy Foods for eventual retail sale, and entities that provide consumer education regarding the consumption of Healthy Foods.

Food Deserts: Distressed geographic areas where either a substantial number or share of residents has low access to a supermarket or large grocery store. For the purpose of satisfying this requirement, a Food Desert must either: (1) be a census tract determined to be a Food Desert by the U.S. Department of Agriculture (USDA), in its USDA Food Access Research Atlas; (2) be a census tract adjacent to a census tract determined to be a Food Desert by the USDA, in its USDA Food Access Research Atlas; which has a median family income less than or equal to 120% of the applicable Area Median Family Income; or (3) be a Geographic Unit as defined in 12 CFR part 1805.201(b)(3)(ii)(B), which (i) individually meets at least one of the criteria in 12 CFR part 1805.201(b)(3)(ii)(D), and (ii) has been identified as having low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.

4. PPC–FA Award: PPC–FA award funds may only be expended for eligible FA activities referenced in Table 3. The PPC–FA Recipient must close Financial Products in PPC: (1) in an Eligible Market or in the Applicant's approved Target Market and (2) in an amount equal to or greater than 100% of the total PPC–FA award. The specific counties that meet the criteria for ''persistent poverty'' can be found at: *https://www.cdfifund.gov/sites/cdfi/files/2023-03/PPC_2020_ACS_Jan20_2023.xlsx*.

5. TA Awards: TA award funds may be expended for the following seven eligible activity categories: (i) Compensation—Personal Services; (ii) Compensation—Fringe Benefits; (iii) Professional Service Costs; (iv) Travel Costs; (v) Training and Education Costs; (vi) Equipment; and (vii) Supplies. The TA Budget is the amount of the award and must be expended in the seven eligible activity categories before the end of the Budget Period. None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Any expenses that are prohibited by the Uniform Requirements are unallowable and are generally found in Subpart E-Cost Principles. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs. For purposes of this NOFA, the seven eligible activity categories are defined in Table 4.

[10] Regulated Institutions include Insured Credit Unions, Insured Depository Institutions, State-Insured Credit Unions and Depository Institution Holding Companies.

TABLE 4—TA ELIGIBLE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM REQUIREMENTS

(i) Compensation—Personal Services	TA paid to cover all remuneration, paid currently or accrued, for services of Applicant's employees rendered during the Period of Performance under the TA award in accordance with section 2 CFR 200.430 of the Uniform Requirements, is allowed. Any work performed directly but unrelated to the purposes of the TA award may not be paid as Compensation through a TA award. For example, the salaries for building maintenance would not carry out the purpose of a TA award and would be deemed unallowable.
(ii) Compensation—Fringe Benefits	TA paid to cover allowances and services provided by the Applicant to its employees as Compensation in addition to regular salaries and wages, in accordance with section 2 CFR 200.431 of the Uniform Requirements, is allowed. Such expenditures are allowable as long as they are made under formally established and consistently applied organizational policies of the Applicant.
(iii) Professional Service Costs	TA paid to cover professional and consultant services (*e.g.,* such as strategic and marketing plan development), rendered by persons who are members of a particular profession or possess a special skill (*e.g.,* credit analysis, portfolio management), and who are not officers or employees of the Applicant, in accordance with section 2 CFR 200.459 of the Uniform Requirements, is allowed. Payment for a consultant's services may not exceed the current maximum of the daily equivalent rate paid to an Executive Schedule Level IV federal employee. Professional and consultant services must build the capacity of the CDFI. For example, professional services that provide direct Development Services to the customers do not build the capacity of the CDFI to provide those services and would not be eligible. The Applicant must comply, as applicable, with section 2 CFR 200.216 of the Uniform Requirements, with respect to payment of Professional Service Costs.
(iv) Travel Costs	TA paid to cover costs of transportation, lodging, subsistence, and related items incurred by the Applicant's personnel who are on travel status on business related to the TA award, in accordance with section 2 CFR 200.475 of the Uniform Requirements, is allowed. Travel Costs do not include costs incurred by the Applicant's consultants who are on travel status. Any payments for travel expenses incurred by the Applicant's personnel but unrelated to carrying out the purpose of the TA award would be deemed unallowable. As such, documentation must be maintained that justifies the travel as necessary to the TA award.
(v) Training and Education Costs	TA paid to cover the cost of training and education provided by the Applicant for employees' development in accordance with section 2 CFR 200.473 of the Uniform Requirements, is allowed. TA can only be used to pay for training costs incurred by the Applicant's employees. Training and Education Costs may not be incurred by the Applicant's consultants.
(vi) Equipment	TA paid to cover tangible personal property, having a useful life of more than one year and a per-unit acquisition cost of at least $5,000, in accordance with section 2 CFR 200.1 of the Uniform Requirements, is allowed. For example, items such as office furnishings and information technology systems are allowable as Equipment costs. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to the purchase of Equipment.
(vii) Supplies	TA paid to cover tangible personal property with a per unit acquisition cost of less than $5,000, in accordance with section 2 CFR 200.1 of the Uniform Requirements, is allowed. For example, a desktop computer costing $1,000 is allowable as a Supply cost. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to the purchase of Supplies.

III. Eligibility Information

A. Eligible Applicants: For the purposes of this NOFA, Table 5 through Table 8 set forth the eligibility criteria to receive an award from the CDFI Fund, along with certain definitions of terms. There are four categories of Applicant eligibility criteria: (1) CDFI Certification criteria (Table 5); (2) requirements that apply to all Applicants (Table 6); (3) requirements that apply to TA Applicants (Table 7); and (4) requirements that apply to FA Applicants (Table 8).

TABLE 5—CDFI CERTIFICATION CRITERIA DEFINITIONS

Certified CDFI	An entity that the CDFI Fund has officially notified that it meets all CDFI Certification requirements.
Certifiable CDFI (FA Applicants)	• An FA Applicant that has submitted a CDFI Certification Application to the CDFI Fund by the deadline specified in this NOFA demonstrating that it meets the CDFI Certification requirements but has not yet been officially Certified. (See Table 12 for Application submission deadlines.) • The CDFI Fund will not enter into an Assistance Agreement unless the Applicant's pending CDFI Certification Application is approved by the CDFI Fund prior to the award announcement date. The CDFI Fund will make CDFI Certification determinations for all Applicants that are Certifiable CDFIs prior to the award announcement date. If the CDFI Certification Application is denied, the Applicant will not be eligible to receive an FA award. There is no right to appeal an Award denial based on denial of the pending CDFI Certification Application.
Emerging CDFI (TA Applicants)	• A non-Certified entity that demonstrates to the CDFI Fund in its Application that it has an acceptable plan to meet CDFI Certification requirements by the end of its Period of Performance, or another date that the CDFI Fund selects. • An Emerging CDFI may or may not have a pending CDFI Certification Application with the CDFI Fund. • An Emerging CDFI that has prior award(s) must comply with CDFI Certification PG&M(s) stated in its prior Assistance Agreement(s). • An Emerging CDFI selected to receive a TA award will be required to become a Certified CDFI by a date specified in the Assistance Agreement.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS

Applicant	• An Applicant must be duly organized as a legal entity (within the United States or its territories). • Only the entity that will carry out the proposed award activities may apply for an award (other than Depository Institution Holding Companies (DIHC) [11]—see below). Recipients may not create a new legal entity to carry out the proposed award activities. • The information in the Application should only reflect the activities of the Applicant, including the presentation of financial and portfolio information (other than DIHCs-see below). Do not include financial or portfolio information from parent companies, Affiliates, or Subsidiaries in the Application unless it relates to the provision of Development Services.

[11] Depository Institution Holding Company or DIHC means a Bank Holding Company or a Savings and Loan Holding Company.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS—Continued

	• An Applicant that applies on behalf of another organization will be rejected without further consideration, other than DIHCs (see below).
Application type and submission overview through *Grants.gov* and Awards Management Information System (AMIS).	• Applicants must submit the Required Application Documents listed in Table 10. • The CDFI Fund will only accept Applications that use the official Application templates provided on the *Grants.gov* and AMIS websites. Applications submitted with alternative or altered templates will not be considered. • Applicants undergo a two-step process that requires the submission of Application documents by two separate deadlines in two different systems: (1) the SF–424 in *Grants.gov* and (2) all other Required Application Documents in AMIS. • *Grants.gov* and the SF–424: ○ *Grants.gov:* Applicants must submit the Standard Form (SF) SF–424, Application for Federal Assistance. ○ All Applicants must register in the *Grants.gov* system to successfully submit an Application. The *Grants.gov* registration process can take 30 days or more to complete. The CDFI Fund strongly encourages Applicants to register as early as possible. ○ The CDFI Fund will not extend the SF–424 application deadline for any Applicant that started the *Grants.gov* registration process on, before, or after the date of the publication of this NOFA, but did not complete it by the deadline except in the case of a federal government administrative or technological error that directly resulted in a late submission of the SF–424. ○ The SF–424 must be submitted in *Grants.gov* on or before the deadline listed in Table 1 and Table 12. Applicants are strongly encouraged to submit their SF–424 as early as possible in the *Grants.gov* system. ○ The deadline for the *Grants.gov* submission is before the AMIS submission deadline. ○ The SF–424 must be submitted under the CDFI Program Funding Opportunity Number for the CDFI Program Application. CDFI Program Applicants should be careful to not select the NACA Program Funding Opportunity Number when submitting their SF–424 for the CDFI Program. CDFI Program Applicants that submit their SF–424 for the CDFI Program Application under the NACA Program Funding Opportunity Number will be deemed ineligible for the CDFI Program Application. ○ If the SF–424 is not accepted by *Grants.gov* by the deadline, the CDFI Fund will not review any material submitted in AMIS and the Application will be deemed ineligible. • AMIS and all other Required Application Documents listed in Table 10: ○ AMIS is an enterprise-wide information technology system. Applicants will use AMIS to submit and store organization and Application information with the CDFI Fund. ○ Applicants are only allowed one CDFI Program Application submission in AMIS. o Each Application in AMIS must be signed by an Authorized Representative. ○ Applicants must ensure that the Authorized Representative is an employee or officer of the Applicant, authorized to sign legal documents on behalf of the organization. *Consultants working on behalf of the organization may not be designated as Authorized Representatives.* ○ Only the Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. ○ All Required Application Documents must be submitted in AMIS on or before the deadline specified in Tables 1 and 12. The CDFI Fund will not extend the deadline for any Applicant except in the case of a federal government administrative or technological error that directly resulted in the late submission of the Application in AMIS.
Employer Identification Number (EIN)	• Applicants must have a unique EIN assigned by the Internal Revenue Service (IRS). • The CDFI Fund will reject an Application submitted with the EIN of a parent or Affiliate organization. • The EIN in the Applicant's AMIS account must match the EIN in the Applicant's System for Award Management (SAM) account. The CDFI Fund reserves the right to reject an Application if the EIN in the Applicant's AMIS account does not match the EIN in its SAM account. • Applicants must enter their EIN into their AMIS profile on or before the deadline specified in Tables 1 and 12.
Unique Entity Identifier (UEI)	• The transition from the Dun and Bradstreet Universal Numbering System (DUNS) to UEI is a federal, government-wide initiative. • An Applicant must apply using its UEI in *Grants.gov.* • The CDFI Fund will reject an Application submitted with the UEI of a parent or Affiliate organization. • The UEI in the Applicant's AMIS account must match the UEI in the Applicant's *Grants.gov* and SAM accounts. The CDFI Fund will reject an Application if the UEI in the Applicant's AMIS account does not match the UEI in its *Grants.gov* and SAM accounts. • Applicants must enter their UEI into their AMIS profile on or before the deadline specified in Tables 1 and 12.
System for Award Management (SAM) ...	• SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. • Applicants must register in SAM as part of the *Grants.gov* registration process. • Applicants that have an active SAM registration have been assigned a UEI. Applicants must also have an EIN in order to register in SAM. • Applicants must be registered in SAM in order to submit an SF–424 in *Grants.gov.* • The CDFI Fund reserves the right to deem an Application ineligible if the Applicant's SAM account expires during the Application evaluation period, or is set to expire before September 30, 2024, and the Applicant does not re-activate, or renew, as applicable, the account within the deadlines that the CDFI Fund communicates to affected Applicants during the Application evaluation period.
AMIS Account	• Each Applicant must register as an organization in AMIS and submit all Required Application Documents listed in Table 10 through the AMIS system. • The Application of any organization that does not properly register in AMIS by the deadline set forth in Table 1—FY 2024 CDFI Program Funding Round Critical Deadlines for Applicants—will be rejected without further consideration. • The Authorized Representative and/or Application Point of Contact must be included as ''users'' in the Applicant's AMIS account. • An Applicant that fails to properly register and update its AMIS account may miss important communication from the CDFI Fund and/or may not be able to successfully submit an Application.
501(c)(4) status	• Pursuant to 2 U.S.C. 1611, any 501(c)(4) organization that engages in lobbying activities is not eligible to receive a CDFI or NACA Program award.
Compliance with Nondiscrimination and Equal Opportunity Statutes, Regulations, and Executive Orders.	• An Applicant * may not be eligible to receive an award if proceedings have been instituted against it in, by, or before any court, governmental agency, or administrative body, and a final determination has been issued within the time period beginning three years prior to the publication of this NOFA until the execution of the Assistance Agreement that indicates the Applicant has violated any federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601 et seq.); the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107).

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS—Continued

	• Applicants* will be required to submit the Title VI Compliance Worksheet (Worksheet) once annually to assist the CDFI Fund in determining whether Applicants are compliant with the Treasury regulations implementing Title VI of the Civil Rights Act (Title VI), set forth in 31 CFR part 22. These requirements are set forth in the United States Department of the Treasury regulations implementing Title VI located in 31 CFR part 22, Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of the Treasury.
	• In addition, an Applicant* must be compliant with federal civil rights requirements in order to be deemed eligible to receive an award from the CDFI Fund. The CDFI Fund will consider an Application submitted by an Applicant that has pending Title VI noncompliance issues, if the CDFI Fund has not yet made a final compliance determination.
	• The Title VI Compliance Worksheet and program award terms and conditions do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.
Depository Institution Holding Company Applicant.	• In the case where a CDFI Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary CDFI Insured Depository Institution, the Application must be submitted by the CDFI Depository Institution Holding Company and reflect the activities and financial performance of the Subsidiary CDFI Insured Depository Institution.
	• If a Depository Institution Holding Company and its Certified CDFI Subsidiary Insured Depository Institution (through which it will carry out the activities of the award) both apply for an award under this NOFA, only the Depository Institution Holding Company will receive an award, not both. In such instances, the Subsidiary Insured Depository Institution will be deemed ineligible.
	• Authorized Representatives of both the Depository Institution Holding Company and the Subsidiary CDFI Insured Depository Institution must certify that the information included in the Application represents that of the Subsidiary CDFI Insured Depository Institution, and that the award funds will be used to support the Subsidiary CDFI Insured Depository Institution for the eligible activities outlined in the Application.
Use of award	• All awards made through this NOFA must be used to support the Applicant's activities in at least one of the FA or TA Eligible Activity Categories (see Section II. (C)).
	• With the exception of Depository Institution Holding Company Applicants, awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent. The Recipient of any award made through this NOFA must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.
Requested award amount	• An Applicant must state its requested award amount in the Application in AMIS. An Applicant that does not include this amount will not be allowed to submit an Application.
Pending resolution of noncompliance	• If an Applicant that is a prior Recipient or allocatee under any CDFI Fund program: (i) has demonstrated it has been in noncompliance and/or default with a previous Assistance Agreement, Award Agreement, Allocation Agreement, bond loan agreement, or agreement to guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance and/or default.
Noncompliance or default status	• The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund award recipient or allocatee under any CDFI Fund program if, as of the AMIS Application deadline in this NOFA, (i) the CDFI Fund has made a final determination in writing that such Applicant is in noncompliance with or default of a previously executed Assistance Agreement, Award Agreement, Allocation Agreement, bond loan agreement, or agreement to guarantee, and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. The CDFI Fund will not consider any Applicant that has defaulted on a loan from the CDFI Fund within five years of the Application deadline.
Debarment/Do Not Pay Verification	• The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant (or Affiliate of an Applicant) if the Applicant is delinquent on any Federal debt.
	• The Do Not Pay Business Center was developed to support federal agencies in their efforts to reduce the number of improper payments made through programs funded by the federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check.

*This requirement also applies to Applicants' prospective sub-recipients that are not direct beneficiaries of Federal financial assistance (*e.g.,* Depository Institutions Holding Companies and their Subsidiary CDFI Insured Depository Institutions).

TABLE 7—ELIGIBILITY REQUIREMENTS FOR TA APPLICANTS

CDFI Certification status	(1) Emerging CDFIs (see definition in Table 5), or (2) Certified CDFIs (see Table 5) that meet the following SECA Applicant criteria: (a) Have total assets as of the end of the Applicant's most recent historic fiscal year[12] in accordance with the FA Application Guidance (as stated in the Applicant's AMIS account and verified by internally prepared financial statements and/or audits) in the following amounts: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million; • Insured Credit Unions and State-Insured Credit Unions: up to $100 million; • Venture Capital Funds**: up to $5 million; • Other CDFIs: up to $5 million; OR (b) Have begun operations (as indicated by the financing activity start date field in the Applicant's AMIS account) on or after January 1, 2020. If a TA Applicant is a Certified CDFI at the time of application, but loses its CDFI Certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered by the CDFI Fund.
Matching Funds	• Matching Funds documentation is not required for TA awards.
Limitation on Awards	• An Emerging CDFI may not receive more than three TA awards as an uncertified CDFI.
$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date.
	• The CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2022 funding round, as well as the requested FY 2024 award, excluding DF–FA and HFFI–FA awards.

TABLE 7—ELIGIBILITY REQUIREMENTS FOR TA APPLICANTS—Continued

Proposed Activities	• Applicants must propose to directly undertake eligible activities with TA awards. For example, an uncertified CDFI Applicant must propose to become Certified as part of its Application and a Certified CDFI Applicant must propose activities that build its capacity to serve its Target Market or an Eligible Market. • Applicants may not propose to use a TA award to create a separate legal entity to become a Certified CDFI or otherwise carry out the TA award activities.
Regulated Institution	• Each Regulated Institution TA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''4''. • TA Applicants with CAMELS/CAMEL ratings of ''5'' will not be eligible for awards. • The CDFI Fund will not approve a TA award for an Applicant that has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant, as well as the Subsidiary Insured Depository Institution. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.

** A Venture Capital Fund is an organization that predominantly invests funds in businesses, typically in the form of either Equity Investments or subordinated debt with equity features such as a revenue participation or warrants, and generally seeks to participate in the upside returns of such businesses in an effort to at least partially offset the risk of its investments.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS

CDFI Certification status	• Each FA Applicant must be a Certified CDFI prior to the date of award announcement. • If a CDFI is uncertified as of the date of NOFA publication, it must have submitted an application for CDFI Certification by the applicable deadline in Table 12 or it will be deemed ineligible to receive an FA award. The CDFI Fund will not extend the deadline for any uncertified Applicant that did not submit the Certification Application by the deadline, except in the case of a federal government administrative or technological error that directly resulted in a late submission of the CDFI Certification Application. • The CDFI Fund will make CDFI Certification determinations for Certifiable Applicants prior to the award announcement date. If the CDFI Certification Application is denied, the Applicant will not be eligible to receive an FA award. • The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues with its Annual Certification and Data Collection Report (ACR) if the CDFI Fund has not yet made a final compliance determination. If a Certified CDFI loses its CDFI Certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered by the CDFI Fund.
Matching Funds documentation	• Native American CDFIs are not required to provide Matching Funds. • Applicants that are required to submit Matching Funds (see Table 9) must submit acceptable documentation attesting that they have received or will receive Matching Funds. Applicants that do not complete the Matching Funds section in the FA Application in AMIS, documenting the source(s) of their Matching Funds, will not be evaluated. See Table 9 for additional information on Matching Funds requirements for FY 2024 Funding Round. The Matching Funds requirement for Category I (SECA) FA Applicants and HFFI–FA Applicants was waived in the final FY 2023 appropriations, and the final FY 2024 appropriations are still pending. Therefore HFFI–FA and SECA FA applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) FA and HFFI–FA Applicants if Matching Funds are not waived in the final FY 2024 CDFI Program appropriations. Category II (Core) FA Applicants must document their Matching Funds in the Matching Funds section in the FA Application in AMIS. Matching Funds information provided in another format will not be considered. • Unless Congress waived the Matching Funds requirement, awards will be limited to no more than two times the amount of In-Hand or Committed Matching Funds documentation provided at the time of Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable). See Table 9 for the definitions of Committed and In-Hand. • Unless Congress waived the Matching Funds requirement, awards will be obligated in like form to the Matching Funds provided at time of Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable). See Table 9. Matching Funds ''Determination of Award Form'' for additional guidance. • Unless Congress waived the Matching Funds requirement, award payments from the CDFI Fund will require eligible dollar-for-dollar In-Hand Matching Funds for the total payment amount. Recipients will not receive a payment until 100% of their Matching Funds are In-Hand. • Unless Congress waived the Matching Funds requirement, the CDFI Fund will reduce and de-obligate the remaining balance of any award that does not demonstrate full dollar-for-dollar Matching Funds equal to the announced award amount by the end of the Matching Funds Window.
Consideration as a Native American CDFI.	• For consideration as a Native American CDFI under this NOFA, an FA Applicant must Primarily Serve a Native Community. Primarily Serves is defined as 50% or more of an Applicant's activities being directed to a Native Community. • For purposes of this NOFA, a Native Community is defined as Native American, Alaska Native, or Native Hawaiian populations or Native American areas defined as federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau-designated Tribal Statistical Areas. • Applicants that do not meet the above conditions will not be considered as a Native American CDFI under this NOFA. • The Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261) permanently waived the Matching Funds requirements for Native American CDFIs. Therefore, if the CDFI Fund determines that a Category II (Core) FA Applicant that attests in its Application to meeting the above conditions does not meet the criteria to be considered a Native American CDFI, the Application will be deemed ineligible for failure to provide Matching Funds.

[12] For the purposes of this NOFA, an Applicant's most recent historic fiscal year end is determined as follows:

(A) Applicants with a 3/31 fiscal year end date will treat FY 2023 as their most recent historic fiscal year and FY 2024 as their current year.

(B) Applicants with a 6/30 fiscal year end date and a completed FY 2023 audit will treat FY 2023 as their most recent historic fiscal year and FY 2024 as their current year.

(C) Applicants with a 6/30 fiscal year end date but without a completed FY 2023 audit will treat FY 2022 as their most recent historic fiscal year and FY 2023 as their current year.

(D) Applicants with a 9/30 fiscal year end date will treat FY 2022 as their most recent historic fiscal year and FY 2023 as their current year.

(E) Applicants with a 12/31 fiscal year end date will treat FY 2022 as their most recent historic fiscal year and FY 2023 as their current year.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS—Continued

$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date. • The CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2022 funding round, as well as the requested FY 2024 award, excluding DF–FA and HFFI–FA awards.
FA Category I (SECA)	• To be an eligible SECA Applicant, an Applicant must meet the following criteria: (1) Be either a Certified or Certifiable CDFI as defined in Table 5; (2) Request $1,400,000 or less in Base-FA award funds; AND EITHER (3) Have total assets as of the end of the Applicant's most recent historic fiscal year in accordance with the FA Application Guidance (as stated in the Applicant's AMIS account and verified by internally prepared financial statements and/or audits) in the following amounts: • Insured Depository Institutions and Depository Institution Holding Companies: up to $250 million; • Insured Credit Unions and State-Insured Credit Unions: up to $100 million; • Venture Capital Funds: up to $5 million; • Other CDFIs: up to $5 million; OR • Have begun operations (as indicated by the financing activity start date field in the Applicant's AMIS account) on or after January 1, 2020.
FA Category II (Core)	• A Core Applicant must be either a Certified or Certifiable CDFI as defined in Table 5. • An Applicant that meets the SECA requirements stated above, and that requests more than $1,400,000 in Base-FA award funds is categorized as an FA Category II (Core) Applicant, regardless of its total assets and/or years in operation. • Such Applicants who meet SECA requirements but wish to apply as a Core FA Applicant by requesting more than $1,400,000 must elect to apply as a Core Applicant upon Application launch in AMIS. The CDFI Fund will not change the Application type (Core FA or SECA FA) after the Application has been launched by the Applicant.
FA Applicants with Community Partners	• A CDFI Applicant can apply for assistance jointly with a Community Partner. The CDFI Applicant must complete the CDFI Program Application and address the Community Partnership in its business plan and other sections of the Application as specified in the Application materials. • The CDFI Applicant must be either a Certified or Certifiable CDFI as defined in Table 5. • An Application with a Community Partner must: ○ Describe how the CDFI Applicant and Community Partner will each participate in the partnership and how the partnership will enhance eligible activities serving the Investment Area and/or Targeted Population. ○ Demonstrate that the Community Partnership activities are consistent with the strategic plan submitted by the CDFI Applicant. • Assistance provided upon approval of an Application with a Community Partner shall only be entrusted to the CDFI Applicant and shall not be used to fund any activity carried out directly by the Community Partner or an Affiliate or Subsidiary thereof.
Regulated Institution	• Each Regulated Institution FA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''3''. • FA Applicants with CAMELS/CAMEL ratings of ''4 or 5'' will not be eligible for awards. • The CDFI Fund will not approve an FA award for an Applicant that has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant as well as the Subsidiary Insured Depository Institution. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.
PPC–FA	• All PPC–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all FA award eligibility requirements; and ○ Provide a PPC–FA award request amount in AMIS.
DF–FA	• All DF–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all FA award eligibility requirements; ○ Submit the DF–FA Application; and ○ Provide a DF–FA award request amount in AMIS.
HFFI–FA	• All HFFI–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all FA award eligibility requirements; ○ Submit the HFFI–FA Application; and ○ Provide a HFFI–FA award request amount in AMIS.

B. Matching Funds Requirements: In order to receive a Base–FA, PPC–FA, or DF–FA award, an Applicant must provide evidence of eligible dollar-for-dollar Matching Funds and attest that it can provide acceptable documentation upon the CDFI Fund's request as part of the Application, unless Congress waived the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, Native American CDFI Applicants are not required to submit Matching Funds for their award requests. The Matching Funds requirement was waived for Category I (SECA) FA Applicants and HFFI–FA Applicants in the final appropriations bill for FY 2023, and the final FY 2024 appropriations are still pending. As a result, Category I (SECA) FA Applicants and HFFI–FA Applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) FA Applicants and HFFI–FA Applicants if Matching Funds are not waived in the final FY 2024 CDFI Program appropriations. An Applicant that represents that it has Equity Investments and/or deposits Matching Funds In-Hand at the time of Application submission must provide documentation of such as part of the Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable). An Applicant that

uses retained earnings as Matching Funds must provide supporting documentation of In-Hand and/or Committed Matching Funds at the time of Application submission. The CDFI Fund will review Matching Funds information, attestations, and supporting Matching Funds documentation, if applicable, prior to award payment and will pay award funds to a Recipient based upon eligible In-Hand Matching Funds. The CDFI Fund encourages Applicants to review the Regulations, the Uniform Requirements, and the Matching Funds guidance materials available on the CDFI Fund's website. Table 9 provides a summary of the Matching Funds requirements for Applicants for whom Matching Funds are required. The Matching Funds requirement for Native American CDFIs is permanently waived. Additional details are set forth in the Application materials.

TABLE 9—MATCHING FUNDS REQUIREMENTS *

In-Hand Matching Funds definition	• Matching Funds are In-Hand when the Applicant receives payment for the Matching Funds from the Matching Funds source and has acceptable documentation that can be provided to the CDFI Fund upon request. Acceptable In-Hand documentation must show the source, form (*e.g.*, grant, loan, deposit, and Equity Investment), amount received, and the date the funds came into physical possession of the Applicant. • The following documentation, depending on the Matching Funds type, must be provided to the CDFI Fund upon request: • loan—the loan agreement and/or promissory note; • grant—the grant letter or agreement; • Equity Investment—the stock certificate, documentation of total equity outstanding, and shareholder agreement; • retained earnings—Retained Earnings Calculator and audited financial statements or call reports from regulating entity for each fiscal year reported in the Retained Earnings Calculator; • third party in-kind contribution- evidence of receipt of contribution and valuation; • deposits—certificates of deposit agreement; • secondary capital—secondary capital agreement and disclosure and acknowledgement statement; AND • clearly legible documentation that demonstrates actual receipt of the Matching Funds including the date of the transaction and the amount, such as a copy of a check or a wire transfer statement. • Unless Congress waived the Matching Funds requirement, Applicants must provide information on their In-Hand Matching Funds in the Matching Funds section of the FA Application in AMIS (refer to Table 10—Required Application Documents) at the time of Application submission. • Although Applicants are not required to provide further documentation for In-Hand Matching Funds at the time of Application submission (other than supporting documentation for retained earnings, deposits, and Equity Investments, which must be provided at the time of Application submission), they must be able to provide documentation to the CDFI Fund upon request.
Matching Funds requirements by Application type.	The following Applicants must provide evidence of acceptable Matching Funds at the time of Application: • Category II/Core FA Applicants, with the exception of Native American CDFIs, applying for Base-FA, PPC–FA, and DF–FA The CDFI Fund reserves the right to request Matching Funds from Category I (SECA) FA Applicants and HFFI–FA Applicants if Matching Funds are not waived in the final FY 2024 CDFI Program appropriations. TA Applicants and Native American CDFI FA Applicants are not required to provide Matching Funds.
Amount of required match	Unless waived by Congress, Applicants must provide evidence of eligible, In-Hand, dollar-for-dollar, non-Federal Matching Funds for every award dollar to be paid by the CDFI Fund. If awarded, Applicants that do not demonstrate 100% In-Hand Matching Funds at the time of Application submission may experience a longer payment timeline.
Determination of award form	Unless the Matching Funds requirement is waived by Congress, awards will be made in comparable form and value to the eligible In-Hand and/or Committed Matching Funds submitted by the Applicant. For awards where Congress has waived the Matching Funds requirement, the form of the award will be a grant. • For example, if an Applicant provides documentation of eligible loan Matching Funds for $200,000 and eligible grant Matching Funds of $400,000, the CDFI Fund will obligate $200,000 of the FA award as a loan and $400,000 as a grant. • The CDFI Fund will not permit a Recipient to change the form of a loan award. For awards where Congress waived the Matching Funds requirement, the form of the award will be a grant.
Matching Funds Window definition	• The Applicant must receive eligible In-Hand Matching Funds between January 1, 2022 and January 15, 2025. • A Recipient must provide the CDFI Fund with all documentation demonstrating the receipt of In-Hand Matching Funds by January 31, 2025.
Matching Funds and form of award	• Recipients will be approved for a maximum award size of two times the total amount of eligible In-Hand and/or Committed Matching Funds included in the Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable), so long as they do not exceed the requested award amount. • The form of the Matching Funds documented in the Application determines the form of the award.
Committed Matching Funds definition	• Matching Funds are Committed when the Applicant has entered into or received a legally binding commitment from the Matching Funds source demonstrating that the Matching Funds will be disbursed to the Applicant at a future date. • The Applicant must provide information on their Committed Matching Funds in the Matching Funds section of the FA Application in AMIS (refer to Table 10—Required Application Documents) at the time of Application submission. • Although the Applicant is not required to provide further documentation for Committed Matching Funds at the time of Application submission (other than supporting documentation for retained earnings, deposits, and Equity Investments, which must be provided at the time of Application submission), it must be able to provide the CDFI Fund, upon request, acceptable written documentation showing the source, form, and amount of the Committed Matching Funds (including, in the case of a loan, the terms thereof), as well as the anticipated payment date of the Committed Matching Funds.
Limitations on Matching Funds	• Matching Funds must be from non-Federal sources. • Applicants cannot proffer Matching Funds that were accepted as Matching Funds for a prior award that required Matching Funds under the CDFI Program, NACA Program, or under another Federal grant or award program. • Matching Funds must comply with the Regulations. • The Matching Funds source(s) must support at least one of the five eligible FA activities (see Section II (C) of this NOFA).
Rights of the CDFI Fund	• The CDFI Fund reserves the right to contact the Matching Funds source to discuss the Matching Funds and the documentation that the Applicant provided. • The CDFI Fund may grant an extension of the Matching Funds Window (defined in Table 9), on a case-by-case basis, if the CDFI Fund deems it appropriate. • The CDFI Fund reserves the right to rescind all or a portion of an award requiring Matching Funds and re-allocate the rescinded award amount to other qualified Applicant(s) if a Recipient fails to provide evidence of In-Hand Matching Funds obtained during the Matching Funds Window totaling its award amount.

TABLE 9—MATCHING FUNDS REQUIREMENTS *—Continued

Matching Funds in the form of third-party in-kind contributions.	• Third party in-kind contributions are non-cash contributions (*i.e.*, property or services) provided by non-Federal third parties to the Applicant. • Third party in-kind contributions will be deemed in the form of a grant for Matching Funds purposes. • Third party in-kind contributions may be in the form of real property, equipment, supplies, and other expendable property. The value of goods and services must directly benefit the eligible FA activities. • For third party in-kind contributions, the fair market value of goods and services must be documented as the grant match. • Applicants will be responsible for documenting the value of all in-kind contributions pursuant to the Uniform Requirements.
Matching Funds in the form of a loan	• An award made in the form of a loan will have the following standardized terms: i. A 13-year term with semi-annual interest-only payments due in years 1 through 10, and fully amortizing payments due each year in years 11 through 13; and ii. A fixed interest rate of 4.19%, which was calculated by the CDFI Fund based on the U.S. Department of the Treasury's 10-year Treasury note. • The Applicant's Matching Funds loan(s) must: i. have a minimum of a 3-year term (loans presented as Matching Funds with less than a 3-year term will not qualify as eligible match); and ii. be from a non-Federal source.
Matching Funds in the form of Equity Investments.	• An Equity Investment source must meet the terms outlined in 12 CFR 1805.401(a): Equity: The CDFI Fund may make non-voting equity investments in a Recipient, including, without limitation, the purchase of non-voting stock. Such stock shall be transferable and, in the discretion of the CDFI Fund, may provide for convertibility to voting stock upon transfer. The CDFI Fund shall not own more than 50 percent of the equity of a Recipient and shall not control its operations. • The CDFI Fund's ownership of equity is calculated by dividing the shares owned by the CDFI Fund by the total number of shares issued by the Recipient. • The CDFI Fund reserves the right, in its sole discretion, to perform its own valuation of Equity Investment source(s) and to determine if the equity value is acceptable to the CDFI Fund.
Severe Constraints Waiver	• In the case of an Applicant demonstrating severe constraints on available sources of Matching Funds, the CDFI Fund, in its sole discretion, may provide a Severe Constraints Waiver, which permits such Applicant to comply with the Matching Funds requirements by reducing such requirements by up to 50%. • In order to be considered eligible for a Severe Constraints Waiver, an Applicant must meet all of the SECA eligibility criteria described in Table 8. Instructions for requesting a Severe Constraints Waiver will be made available if required. • No more than 25% of the total funds available for obligation under this funding round may qualify for a Severe Constraints Waiver.
Ineligible Matching Funds	• Applicants will not be given the opportunity to correct or amend the Matching Funds information included in the FA Application after Application submission if the CDFI Fund determines that any portion of the Applicant's Matching Funds is ineligible.
Use of Matching Funds from a prior CDFI Program Recipient.	If an Applicant offers Matching Funds documentation from an organization that was a prior Recipient under the CDFI Program or NACA Program, the Applicant must be able to prove to the CDFI Fund's satisfaction that such funds do not consist, in whole or in part, of CDFI Program funds, NACA Program funds, or other Federal funds.
Matching Funds in the form of retained earnings.	• Retained earnings are eligible for use as Matching Funds in an amount equal to the CDFI Fund's calculation of: i. the increase in retained earnings that occurred over any one of the Applicant's fiscal years within the Matching Funds Window, adjusted to remove revenue and expenses derived from Federal sources and Matching Funds used for an award; or ii. the annual average of such increases that occurred over any three consecutive fiscal years of the Applicant with at least one of the fiscal years occurring within the Matching Funds Window, adjusted to remove revenue and expenses derived from Federal sources and Matching Funds used for an award; or iii. any increases as measured in (i) and (ii) will be adjusted to remove Matching Funds used for a prior award.. • Retained earnings will be matched in the form of a grant. • Depository Institution Holding Company Applicants must provide call reports for the Depository Institution Holding Company in order to verify their retained earnings, even if the requested award will support its Subsidiary CDFI Insured Depository Institution.
Special rule for Regulated Institutions	• A Regulated Institution's retained earnings are eligible for use as Matching Funds in an amount equal to the CDFI Fund's calculation of: i. the increase in retained earnings that occurred over any one of the Applicant's fiscal years within the Matching Funds Window, adjusted to remove revenue from Federal sources and Matching Funds used for an award; or ii. the annual average of such increases that occurred over any three consecutive fiscal years of the Applicant with at least one of the fiscal years occurring within the Matching Funds Window, adjusted to remove revenue and expenses derived from Federal sources and Matching Funds used for an award; or iii. the entire retained earnings that have been accumulated since the inception of the Applicant, as provided in the Regulations.
.....	• If option (iii) is used for Insured Credit Unions or State-Insured Credit Unions, the Applicant must increase its member and/or non-member shares and/or total loans outstanding by an amount equal to the amount of retained earnings committed as Matching Funds. • This increase (1) will be measured on a quarterly basis from December 31, 2023; (2) must occur by September 30, 2025; and (3) will be based on amounts reported in the Applicant's National Credit Union Administration (NCUA) form 5300 Call Report, or equivalent. • The CDFI Fund will assess the likelihood of this increase during the Application review process. • An award will not be made to any Applicant that has not demonstrated in the relevant NCUA form 5300 call reports or equivalent that it has increased shares and/or total loans outstanding by at least 25% of the requested FA award amount (including all awards requiring Matching Funds) between December 31, 2021, and December 31, 2022. • The Matching Funds are not In-Hand until the Recipient has increased its member and/or non-member shares, deposits and/or total loans outstanding by the amount of retained earnings since inception that are being used as Matching Funds.

TABLE 9—MATCHING FUNDS REQUIREMENTS *—Continued

.....	• If option (iii) is used for Insured Depository Institutions or Depository Institution Holding Companies, the Applicant or its Subsidiary CDFI Insured Depository Institution (in the case of a Depository Institution Holding Company) must increase deposits and/or total loans outstanding by an amount equal to the amount of retained earnings committed as Matching Funds. Depository Institution Holding Company Applicants must use the call reports of the Subsidiary CDFI Insured Depository Institution that the requested the FA award will support. • This increase (1) will be measured on a quarterly basis from December 31, 2023; (2) must occur by September 30, 2025; and (3) will be based on amounts reported in the call report. • The CDFI Fund will assess the likelihood of this increase during the Application review process. • An award will not be made to any Applicant that has not demonstrated in the relevant call reports that it has increased deposits and/or total loans outstanding by at least 25% of the requested FA award amount (including all awards requiring Matching Funds) between December 31, 2021, and December 31, 2022. • The Matching Funds are not In-Hand until the Recipient has increased its deposits and/or total loans outstanding by the amount of retained earnings since inception that are being used as Matching Funds.
.....	• All regulated Applicants utilizing the option (iii) should refer to the Retained Earnings Guidance included in the Retained Earnings Calculator Excel Workbook found on the CDFI Fund's website.

* The requirements set forth in Table 9 are applicable to Category II (Core) FA Applicants, with the exception of Native American CDFIs, applying for Base–FA, PPC–FA, and DF–FA. The Matching Funds requirements were permanently waived for Native American CDFIs. Therefore, the requirements set forth in Table 9 are not applicable to Native American CDFI Applicants for the FY 2024 Funding Round. Category I (SECA) FA Applicants and HFFI–FA Applicants are not required to submit Matching Funds at the time of Applications submission but the CDFI Fund reserves the right to request Matching Funds from these Applicants if the Matching Funds requirement is not waived in the final FY 2024 CDFI Program appropriations.

IV. Application and Submission Information

A. Address to Request an Application Package: Application materials can be found on the CDFI Fund's website at *www.cdfifund.gov/cdfi.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov.* Paper versions of Application materials will only be provided if an Applicant cannot access the CDFI Fund's website.

B. Content and Form of Application Submission: All Applications must be prepared using the English language, and calculations must be computed in U.S. dollars. The following table lists the Required Application Documents for the FY 2024 Funding Round. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. Information submitted by the Applicant that the CDFI Fund has not specifically requested will not be reviewed or considered as part of the Application. Financial data, portfolio, and activity information provided in the Application should only include the Applicant's activities. Information submitted must accurately reflect the Applicant's activities (other than Depository Institution Holding Companies—see Table 6).

TABLE 10—REQUIRED APPLICATION DOCUMENTS

Application documents	Applicant type	Submission format
Active AMIS Account	All Applicants	AMIS.
SF–424	All Applicants	Fillable PDF in *Grants.gov.*
Title VI Compliance Worksheet	All Applicants	AMIS.
CDFI Program Application Components: • Funding Application Detail. • Data, Charts, and Narrative sections as listed in AMIS and outlined in Application materials. • Matching Funds (FA Core Applicants, with the exception of Native American CDFIs).	All Applicants	AMIS.
PPC–FA Application Components: • Funding Application Detail. • Narratives. • AMIS Charts.	PPC–FA Applicants	AMIS.
DF–FA Application Components: • Funding Application Detail. • Narratives. • AMIS Charts.	DF–FA Applicants	AMIS.
HFFI–FA Application Components: • Funding Application Detail. • Narratives. • AMIS Charts.	HFFI–FA Applicants	AMIS.
Attachments to the Application		
Key Staff Resumes	All Applicants	PDF or Word document in AMIS.
Organizational Chart	All Applicants	PDF in AMIS.
Completed, final audited financial statements for the Applicant's Three Most Recent Historic Fiscal Years.	FA Applicants and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Unaudited financial statements for Applicant's Three Most Recent Historic Years (required if available, and only if audited financial statements are not available).	FA and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Current Year to Date—September 30, 2023 Unaudited financial statements.	FA and TA Applicants: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Community Partnership Agreement	FA Applicants, if applicable	PDF or Word document in AMIS.
Retained Earnings Calculator Excel Workbook (required only if using retained earnings as Matching Funds).	FA Core Applicants, if applicable	Excel in AMIS.

TABLE 10—REQUIRED APPLICATION DOCUMENTS—Continued

Application documents	Applicant type	Submission format
Call reports for each fiscal year reported in the Retained Earnings Calculator.	FA Core Applicants: Regulated Institutions that are using retained earnings as Matching Funds.	PDF in AMIS.
Equity Investment Matching Funds Documentation	FA Core Applicants: For-profit CDFIs that are using In-Hand Equity Investment(s) as Matching Funds.	PDF or Word document in AMIS.
Deposits Matching Funds Documentation	FA Core Applicants: Regulated Institutions that are using In-Hand Deposits as Matching Funds.	PDF or Word document in AMIS.

C. Application Submission: The CDFI Fund has a two-step process that requires the submission of Required Application Documents (listed in Table 10) on separate deadlines and locations. The SF–424 must be submitted through *Grants.gov* and all other Required Application Documents through the AMIS system. The CDFI Fund will not accept Applications via email, mail, facsimile, or other forms of communication, except in extremely rare circumstances that have been pre-approved in writing by the CDFI Fund. The deadline for submitting the SF–424 is listed in Tables 1 and 12.

All Applicants must register in the *Grants.gov* system to successfully submit the SF–424. The *Grants.gov* registration process can take 45 days or longer to complete and the CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as early as possible (refer to the following link: *http://www.grants.gov/web/grants/register.html*). Since the *Grants.gov* registration process requires Applicants to have a UEI and an EIN, Applicants without these required items should allow for additional time to complete the *Grants.gov* registration process. The CDFI Fund will not extend the Application deadline for any Applicant that started the *Grants.gov* registration process but did not complete it by the deadline. An Applicant that has previously registered with *Grants.gov* must verify that its registration is current and active. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process as the CDFI Fund does not maintain the *Grants.gov* system.

Each Application must be signed by a designated Authorized Representative in AMIS before it can be submitted. Applicants must ensure that an Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only a designated Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. If an Authorized Representative or Application Point of Contact does not submit the Application, the Application will be deemed ineligible.

D. Unique Entity Identifier (UEI): The UEI has replaced the Dun and Bradstreet Data Universal Numbering System (DUNS) number. The UEI, generated in the System for Award Management (*SAM.gov*), has become the official identifier for doing business with the federal government. This transition allows the federal government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government. If an entity is registered in *SAM.gov* today, its UEI has already been assigned and is viewable in *SAM.gov*, including inactive registrations. New registrants will be assigned a UEI as part of their SAM registration.

E. System for Award Management (SAM): Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM before submitting its Application. When accessing *SAM.gov*, users will be asked to create a *Login.gov* user account (if they don't already have one). Going forward, users will use their *Login.gov* username and password every time when logging into *SAM.gov*. Registration in SAM is required as part of the *Grants.gov* registration process. The SAM registration process may take one month or longer to complete. An original, signed notarized letter identifying the authorized entity administrator for the entity associated with the UEI is required. This requirement is applicable to new entities registering in SAM or an existing registration where there is no existing entity administrator. Existing entities with registered entity administrators do not need to submit an annual notarized letter. Applicants without an EIN should allow for additional time as an Applicant cannot register in SAM without an EIN. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Each Applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an Application under consideration by a federal awarding agency. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit the SF–424 in *Grants.gov* or Application in AMIS by the applicable Application deadlines. These restrictions also apply to organizations that have not yet received a UEI or EIN by the established deadline. Applicants must contact SAM directly with questions related to registration or SAM account changes as the CDFI Fund does not maintain this system and has no ability to make changes or correct errors of any kind. For more information about SAM, visit *https://www.sam.gov.*

TABLE 11—GRANTS.GOV REGISTRATION TIMELINE SUMMARY

Step	Agency	Estimated minimum time to complete
Obtain an EIN	Internal Revenue Service (IRS)	Two (2) Weeks.*
Register in *SAM.gov*	System for Award Management (*SAM.gov*). This step will include obtaining a UEI..	Four (4) Weeks.*

TABLE 11—GRANTS.GOV REGISTRATION TIMELINE SUMMARY—Continued

Step	Agency	Estimated minimum time to complete
Register in *Grants.gov*	*Grants.gov*	One (1) Week.**

* Applicants are advised that the stated durations are estimates only and represent minimum timeframes. Actual timeframes may take longer. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account, has not yet received a UEI or EIN, and/or fails to properly register in *Grants.gov*.

** This estimate assumes an Applicant has a UEI, an EIN, and is already registered in *SAM.gov*.

F. Submission Dates and Times:

1. Submission Deadlines: The following table provides the critical deadlines for the FY 2024 Funding Round.

TABLE 12—FY 2024 CDFI PROGRAM FUNDING ROUNDCRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time- ET)	Submission method
Last day to create an Awards Management Information Systems (AMIS) Account (all Applicants).	January 5, 2024	11:59 p.m. ET	AMIS.
Last day to enter EIN and UEI in AMIS (all Applicants).	January 5, 2024	11:59 p.m. ET	AMIS.
Last day to submit SF–424 (Application for Federal Assistance).	January 5, 2024	11:59 p.m. ET	Electronically via Grants.gov
Last day to contact Certification, Compliance Monitoring and Evaluation (CCME) Help Desk regarding CDFI Certification Applications for uncertified FA Applicants.	February 2, 2024	11:59 p.m. ET	Service Request via AMIS.
Last day to contact CDFI Program staff	February 2, 2024	5:00 p.m. ET	Service Request via AMIS Or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only).	February 6, 2024	5:00 p.m. ET	Service Request via AMIS Or 202–653–0422 Or *AMIS@cdfi.treas.gov*.
Last day to submit CDFI Certification Applications for uncertified FA Applicants.	February 6, 2024	11:59 p.m. ET	AMIS.
Last day to submit Title VI Compliance Worksheet (all Applicants)*.	February 6, 2024	11:59 p.m. ET	AMIS.
Last day to submit CDFI Program Application for Financial Assistance (FA) or Technical Assistance (TA).	February 6, 2024	11:59 p.m. ET	AMIS.

* This requirement also applies to Applicants' prospective sub-recipients that are not direct beneficiaries of Federal financial assistance (*e.g.,* Depository Institution Holding Companies and their Subsidiary CDFI Insured Depository Institutions).

2. Confirmation of Application Submission in Grants.gov and AMIS: Applicants are required to submit the SF–424, Application for Federal Assistance through the *Grants.gov* system, under the CDFI Program Funding Opportunity Number by the applicable deadline. All other Required Application Documents (listed in Table 10) must be submitted through the AMIS website by the applicable deadline. Applicants must submit the SF–424 prior to submitting the Application in AMIS. If the SF–424 is not successfully accepted by *Grants.gov* by the deadline, the CDFI Fund will not review the Application submitted in AMIS, and the Application will be deemed ineligible.

a. *Grants.gov* Submission Information: Each Applicant will receive an email from *Grants.gov* immediately after submitting the SF–424 confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number for the submitted SF–424. Within 48 hours, the Applicant will receive a second email, which will indicate if the submitted SF–424 was either successfully validated or rejected with errors. However, Applicants should not rely on the email notification from *Grants.gov* to confirm that their SF–424 was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their SF–424 by contacting the helpdesk at *Grants.gov* directly. The Application material submitted in AMIS is not officially accepted by the CDFI Fund until *Grants.gov* has validated the SF–424.

b. AMIS Submission Information: AMIS is a web-based system where Applicants will directly enter their Application information and add the required attachments listed in Table 10. AMIS will verify that the Applicant provided the minimum information required to submit an Application. Applicants are responsible for the quality and accuracy of the information and attachments included in the Application submitted in AMIS. The CDFI Fund strongly encourages Applicants to allow for sufficient time to review and complete all Required Application Documents listed in Table

10, and remedy any issues prior to the Application deadline. Each Application must be signed by an Authorized Representative in AMIS before it can be submitted. Applicants must ensure that the Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only an Authorized Representative or an Application Point of Contact may submit an Application. If an Authorized Representative or Application Point of Contact does not submit the Application, the Application will be deemed ineligible. Applicants may only submit one Base-FA or TA Application under the CDFI Program. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock or allow multiple Application submissions.

3. Late Submission or AMIS Account Creation: The CDFI Fund will not accept an Application if the SF–424 is not submitted and accepted by *Grants.gov* by the SF–424 deadline listed in Table 1 and Table 12. Additionally, the CDFI Fund will not accept an Application if it is not signed by an Authorized Representative and submitted in AMIS by the Application deadline or if an Applicant did not submit the required Title VI Compliance Worksheet by the Application deadline listed in Table 1 and Table 12. The CDFI Fund will also not accept an Application from an Applicant that failed to create an AMIS account by the deadlines specified in Table 1 and Table 12. In these cases, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible.

However, in cases where a federal government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424, the Application, or creating an AMIS account, or precluding an Applicant from submitting the Title VI Compliance Worksheet by the deadlines stated in this NOFA, Applicants are provided the opportunity to submit a written request for acceptance of late submissions. Be aware that unexpected delay in a federal government process does not in and of itself constitute a federal government administrative or technological error. The CDFI Fund will only approve the late submission of the SF–424, the Application, the Title VI Compliance worksheet, or the late creation of an AMIS account if the Applicant demonstrates that an unexpected delay was the direct result of a federal government administrative or technological error.

a. Creation of AMIS Account: In cases where a federal government administrative or technological error directly resulted in precluding an Applicant from creating an AMIS account by the required deadline, the Applicant must submit a written request for approval to create its AMIS account after the deadline, and include documentation of the error, no later than two business days after the AMIS account creation deadline. The CDFI Fund will not respond to requests for creating an AMIS account after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program or an email to *cdfihelp@cdfi.treas.gov* with a subject line of ''AMIS Account Creation Deadline Extension Request.''

b. SF–424 Late Submission: In cases where a federal government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424 by the required deadline, the Applicant must submit a written request for acceptance of the late SF–424 submission and include documentation of the error no later than two business days after the SF–424 deadline. The CDFI Fund will not respond to requests for acceptance of late SF–424 submissions after that time period. Applicants must submit late SF–424 submission requests to the CDFI Fund via an AMIS Service Request to the CDFI Program with a subject line of ''Late SF–424 Submission Request.''

c. Title VI Compliance Worksheet Late Submission: In cases where a federal government administrative or technological error directly precluded an Applicant from submitting the Title VI Compliance Worksheet by the required deadline, the Applicant must submit a written request for approval to submit the Worksheet after the deadline, and include documentation of the error, no later than two business days after the Title VI Compliance Worksheet submission deadline. The CDFI Fund will not respond to requests for submitting a Title VI Compliance Worksheet after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program with a subject line of ''CDFI Program—Title VI Compliance Worksheet Deadline Extension Request.''

d. AMIS Application Late Submission: In cases where a federal government administrative or technological error directly resulted in precluding an Applicant from submitting the Application in AMIS by the required deadline, the Applicant must submit a written request for acceptance of the late Application submission and include documentation of the error no later than two business days after the Application deadline. The CDFI Fund will not respond to requests for acceptance of late Application submissions after that time period. Applicants must submit late Application submission requests to the CDFI Fund via an AMIS Service Request to the CDFI Program with a subject line of ''Late Application Submission Request.''

G. Funding Restrictions: Base-FA, PPC–FA, DF–FA, HFFI–FA and TA awards are limited by the following:

1. Base-FA Awards:

a. A Recipient shall use Base-FA award funds only for the eligible activities described in Section II. (C)(1) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, Base-FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. Base-FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay Base-FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

2. PPC–FA Awards:

a. A Recipient shall use PPC–FA award funds only for the eligible activities described in Section II. (C)(5) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, PPC–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. PPC–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay PPC–FA award

funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

3. DF–FA Awards:

a. A Recipient shall use DF–FA award funds only for the eligible activities described in Section II. (C)(2) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, DF–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. DF–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay DF–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

4. HFFI–FA Awards:

a. A Recipient shall use HFFI–FA award funds only for the eligible activities described in Section II. (C)(4) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, HFFI–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. HFFI–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay HFFI–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

5. TA Awards:

a. A Recipient shall use TA award funds only for the eligible activities described in Section II.(C)(3) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, TA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. TA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay TA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

V. Application Review Information

A. Criteria: If the Applicant has submitted an eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or risk that its Application will be rejected. The CDFI Fund will review the Base-FA, DF–FA, PPC–FA, HFFI–FA, and TA Applications in accordance with the process below. All internal and external reviewers will complete the CDFI Fund's conflict of interest process. The CDFI Fund's Application conflict of interest policy is located on the CDFI Fund's website.

1. Base-FA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application using a five-step review process illustrated in the sections below. Applicants that meet the minimum criteria will advance to the next step in the review process. Applicants applying as a Community Partnership must describe the partnership in the Application pursuant to the requirements set forth in Table 8, and will be evaluated in accordance with the review process described below.

a. Step 1: Eligibility Review: The CDFI Fund will evaluate each Application to determine its eligibility status pursuant to Section III of this NOFA.

b. Step 2: Financial Analysis and Compliance Risk Evaluation:

i. Step 2: Financial Analysis: For Regulated Institutions, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal or State Banking Agency. As detailed in Table 8, each Regulated Institution FA Applicant (including a subsidiary Depository Institution that will expend and carry out the activities of an award on behalf of a Depository Institution Holding Company Applicant) must have a CAMELS/CAMEL rating of at least ''3'' and/or no significant material concerns from its regulator and a CRA assessment rating of at least ''Satisfactory''.

For non-regulated Applicants, the CDFI Fund will evaluate the financial health and viability of each non-regulated Applicant using financial information provided by the Applicant. For the financial analysis, each non-regulated Applicant will receive a Total Financial Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. The Total Financial Composite Score is based on the analysis of twenty-three (23) financial indicators. Applications will be grouped based on the Total Financial Composite Score. Applicants must receive a Total Financial Composite Score of one (1), two (2), or three (3) to advance to Step 3. Applicants that receive an initial Total Financial Composite Score of four (4) or five (5) will be re-evaluated and re-scored by CDFI Fund staff. If the Total Financial Composite Score remains four (4) or five (5) after CDFI Fund staff review, the Applicant will not advance to Step 3.

ii. Step 2: Compliance Risk Evaluation: For the compliance analysis, the CDFI Fund will evaluate the compliance risk of each Applicant using information provided in the Application, as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to meeting the PG&Ms set forth in the Assistance Agreement. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI Fund staff review, the Applicant will not advance to Step 3.

c. Step 3: Business Plan Review: Applicants that proceed to Step 3 will

be evaluated on the soundness of their comprehensive business plan. Two external, non-CDFI Fund Reviewers will conduct the Step 3: Business Plan Review. Reviewers will evaluate the Application sections listed in Table 13. All Applications will be reviewed in accordance with standard reviewer evaluation materials. At the conclusion of the Step 3 evaluation, Applications will be ranked based on Total Business Plan Scores, in descending order from highest Total Business Plan Score to lowest Total Business Plan Score. Each category of Applicant type (Core and SECA) will be ranked separately. An amount up to but not exceeding the highest scoring 60% of Core Applicants in the Core Applicant pool and an amount up to, but not exceeding, the highest scoring 70% of SECA Applicants in the SECA Applicant pool will progress to Step 4. Within each category of Applicant type (Core and SECA) respectively, if a tie in Total Business Plan Scores would prevent an Applicant from moving to Step 4, all Applicants with the same score will progress to Step 4. Lastly, the CDFI Fund may consider the geographic diversity of Applicants based on primary geographic market served (Major Urban Area, Micropolitan Area, Minor Urban Area, and Rural Area) when determining the Step 4 Applicant pool.

Based on funding availability for Core and SECA Base-FA Applicant types, the CDFI Fund reserves the right to limit the number of Applicants that progress from Step 3 to Step 4 to ensure that the CDFI Program can meaningfully vary award amounts among Applicants with different Step 4 Policy Objective scores, while maintaining minimum award amounts specified in Table 2. In cases where funding availability is not sufficient to progress all Applicants within the top 60% of the Core Applicant pool and within the top 70% of the SECA Applicant pool from Step 3 to Step 4, priority will be given to Applicants that score highest on the Total Business Plan Score in each Applicant type (Core and SECA).

TABLE 13—STEP 3: BASE-FA BUSINESS PLAN REVIEW SCORING CRITERIA

Base-FA application sections	Possible score	Score needed to advance
Mission and Community Needs	Scored as a component of the other Base-FA Application Sections.	N/A.
Business Strategy	12	N/A.
Market and Competitive Analysis	7	N/A.
Products and Services	12	N/A.
Management and Track Record	12	N/A.
Growth and Projections	7	N/A.
Total Business Plan Score	50	Core Applicants: Up to, but not exceeding, top 60% of all Core Applicants SECA Applicants: Up to, but not exceeding, top 70% of all SECA Applicants.

d. Step 4: Policy Objective Review: The CDFI Fund internal reviewers will evaluate each Application to determine its ability to meet policy objectives of the CDFI Fund. Each Applicant will be evaluated in each of the categories listed in Table 14, and will receive a Total Policy Objective Review Score on a scale of one (1) to five (5), with one (1) being the highest score. Applicants are then grouped according to Total Policy Objective Review Scores.

The CDFI Fund also conducts a due diligence review for Applicants that includes an analysis of programmatic risk factors including, but not limited to: history of performance in managing Federal awards (including timeliness of reporting and compliance); ability to meet FA Objective(s) selected by Base-FA Applicants in their Applications; reports and findings from audits; and ability to effectively implement federal requirements, each of which could impact the Total Policy Objective Review Score.

TABLE 14—STEP 4: BASE-FA POLICY REVIEW SCORING CRITERIA

Section	Possible scores	High score	Score needed to advance
Economic Distress	1, 2, 3, 4, or 5	1	N/A.
Economic Opportunities	1, 2, 3, 4, or 5	1	N/A.
Community Collaboration	1, 2, 3, 4, or 5	1	N/A.
Total Policy Objective Review Composite Score	1, 2, 3, 4, or 5	1	All Scores Advance.

e. Step 5: Award Amount Determination: The CDFI Fund determines an award amount for each Application based on the Step 4 Total Policy Objective Review Score, the Applicant's request amount, and on certain other factors, including, but not limited to, the Applicant's deployment track record, minimum award size, and funding availability. Applicants may have award amounts reduced from the requested award amount or not funded as a result of this analysis. Based on funding availability for Core, SECA, and/or NACA Base-FA Applicant types, the CDFI Fund reserves the right to not award all Applicants that advance to Step 5. In cases where funding availability is not sufficient to award all Applications, priority will be given to Applicants that score highest on the Step 4: Policy Objective Review in each Applicant type Category (Core and SECA). For Core FA Applicants, the

award cannot exceed 30% of the Applicant's total portfolio outstanding as of the Applicant's most recent historic fiscal year end. For SECA FA Applicants, the award cannot exceed 75% of the Applicant's total portfolio outstanding as of the Applicant's most recent historic fiscal year end, or the minimum award size as noted in Table 2, whichever is greater.

2. HFFI–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each HFFI–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application sections listed in Table 15 and assign a Total HFFI- FA Score up to 60 points. The CDFI Fund will make awards to the highest scoring Applicants first. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base-FA award will not be considered for a HFFI–FA award.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an HFFI–FA award. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund may reduce awards sizes from requested amounts based on certain variables, including but not limited to, an Applicant's loan disbursement activity, total portfolio outstanding, or compliance with prior HFFI–FA awards. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

TABLE 15—STEP 4 HFFI–FA APPLICATION SCORING CRITERIA

Sections	Possible score (points)
Target Market Profile	10
Healthy Food Financial Products	10
Projected HFFI–FA Activities	15
HFFI Track Record	20
Management Capacity for Providing Healthy Food Financing	5
Total HFFI-FA Score	60

3. PPC–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate the PPC–FA request of each PPC–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. PPC–FA requests are not scored. PPC–FA award amounts will be determined based on the total number of eligible Applicants and funding availability, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's overall portfolio size, historical track record of deployment in PPC, pipeline of projects in PPC, minimum award size, and funding availability. Applicants that fail to receive a Base-FA award will not be considered for a PPC–FA award.

4. DF–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each DF–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application and assign a Total DF–FA Score on a scale of one (1) to three (3), with one (1) being the highest score. Applicants are then grouped according to Total DF–FA Score. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base-FA award will not be considered for a DF–FA award. Award amounts will be determined on the basis of the Total DF–FA Score, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's deployment track record, minimum award size, and funding availability. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund will make awards to the highest scoring Applicants first.

TABLE 16—STEP 3 DF–FA APPLICATION SCORING CRITERIA

Section	Possible scores	High score
DF–FA Narrative Questions	1, 2, or 3	1
Total DF–FA Score	1, 2, or 3	1

5. TA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application to determine its eligibility pursuant to Section III of this NOFA. If the Application satisfies the eligibility criteria, the CDFI Fund will conduct the TA Business Plan Review in two parts. Emerging CDFI Applicants must receive a rating of Low Risk or Medium Risk in Part I of the TA Business Plan Review to progress to Part II of the TA Business Plan Review. Emerging CDFI Applicants that receive a rating of High Risk in Part I of the TA Business Plan Review will not be considered for an award. Part I of the TA Business Plan Review is not applicable for Certified CDFI Applicants. Emerging CDFI and Certified CDFI Applicants must receive a rating of Low Risk or Medium Risk in Part II of the TA Business Plan Review to be considered for an award. Applicants that receive a rating of High Risk in Part II of the TA Business Plan Review will not be considered for an award.

An Applicant that is a Certified CDFI will be evaluated on the demonstrated need for a TA award to build the CDFI's capacity, further the Applicant's strategic goals, and achieve impact within the Applicant's Target Market. An Applicant that is an Emerging CDFI will be evaluated on the Applicant's demonstrated capability and plan to achieve CDFI Certification within three years, or if a prior Recipient, the CDFI

Certification PG&M stated in its prior Assistance Agreement. An Applicant that is an Emerging CDFI will also be evaluated on its demonstrated need for a TA award to build the CDFI's capacity and further its strategic goals. The CDFI Fund will rate each part of the TA Business Plan Review as indicated in Table 17.

TABLE 17—TA BUSINESS PLAN REVIEW

Business plan review component	Applicant type	Ratings
Part I:		
Primary Mission	Emerging CDFI Applicants	Low Risk, Medium Risk, or High Risk.
Financing Entity	Emerging CDFI Applicants.	
Target Market	Emerging CDFI Applicants.	
Accountability	Emerging CDFI Applicants.	
Development Services	Emerging CDFI Applicants.	
Part II:		
Target Market Needs & Strategy	Emerging and Certified CDFI Applicants	Low Risk, Medium Risk, or High Risk.
Organizational Capacity	Emerging and Certified CDFI Applicants.	
Management Capacity	Emerging and Certified CDFI Applicants.	

Each TA Application will be evaluated by one internal CDFI Fund reviewer. The Business Plan Review of all Applications will be reviewed in accordance with CDFI Fund standard reviewer evaluation materials.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an award. This due diligence includes an analysis of programmatic and financial risk factors including, but not limited to, financial stability, history of performance in managing Federal awards (including timeliness of reporting and compliance), reports and findings from audits, and the Applicant's ability to effectively implement federal requirements. The CDFI Fund will also evaluate the compliance risk of each Applicant using information provided in the Application as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to meeting the PG&Ms set forth in the Assistance Agreement. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI staff review, the Applicant will not be considered for an award. The CDFI Fund will also evaluate the Applicant's ability to meet CDFI Certification criteria of being a legal entity and a non-government entity. Award amounts may be reduced as a result of the due diligence analysis in addition to consideration of the Applicant's funding request and similar factors. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

6. Regulated Institutions: The CDFI Fund will consider safety and soundness information from the Appropriate Federal or State Banking Agency. If the Applicant is a CDFI Depository Institution Holding Company, the CDFI Fund will consider information provided by the Appropriate Federal or State Banking Agencies about both the CDFI Depository Institution Holding Company and the Certified CDFI Subsidiary Insured Depository Institution that will expend and carry out the award. If the Appropriate Federal or State Banking Agency identifies safety and soundness concerns (including any concerns for Subsidiary Depository Institutions carrying out the activities of an award on behalf of a CDFI Depository Institution Holding Company), the CDFI Fund will assess whether such concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested.

7. Non-Regulated Institutions: The CDFI Fund must ensure, to the maximum extent practicable, that Recipients which are non-regulated CDFIs are financially and managerially sound, and maintain appropriate internal controls (12 U.S.C. 4707(f)(1)(A) and 12 CFR 1805.800(b)). Further, the CDFI Fund must determine that an Applicant's capacity to operate as a CDFI and its continued viability will not be dependent upon assistance from the CDFI Fund (12 U.S.C. 4704(b)(2)(A)). If it is determined that the Applicant is incapable of meeting these requirements, the CDFI Fund reserves the right to deem the Applicant ineligible or terminate the award.

B. Anticipated Award Announcement: The CDFI Fund anticipates making the CDFI Program award announcement before September 30, 2024. However, the anticipated award announcement date is subject to change without notice.

C. Application Rejection: The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that: adversely affects an Applicant's eligibility for an award; adversely affects the Recipient's CDFI Certification (to the extent that the award is conditional upon CDFI Certification); adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information about the changes through its website. The CDFI Fund's award decisions are final, and there is no right to appeal decisions.

D. External Non-CDFI Fund Reviewers: All external non-CDFI Fund reviewers are selected based on criteria that includes a professional background in community and economic development finance, and experience reviewing the financial statements of all CDFI institution types. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund. The CDFI Fund's Application reader conflict of interest policy is located on the CDFI Fund's website.

VI. Federal Award Administration Information

A. Award Notification: Each successful Applicant will receive an email ''notice of award'' notification from the CDFI Fund stating that its Application has been approved for an

award. Each Applicant not selected for an award will receive an email stating that a debriefing notice has been provided in its AMIS account.

B. Assistance Agreement: Each Applicant selected to receive an award must enter into an Assistance Agreement with the CDFI Fund in order to receive a payment(s). The Assistance Agreement will set forth the award's terms and conditions, including but not be limited to the: (i) award amount; (ii) award type; (iii) award uses; (iv) eligible use of award funds; (v) PG&Ms; and (vi) reporting requirements. FA Assistance Agreements have three-year Periods of Performance. TA Assistance Agreements have two-year Periods of Performance for Certified CDFIs and three-year Periods of Performance for Emerging CDFIs.

1. Certificate of Good Standing: All FA and TA Recipients that are not Regulated Institutions will be required to provide the CDFI Fund with a certificate of good standing from the secretary of state for the Recipient's jurisdiction of formation prior to closing. This certificate can often be acquired online on the secretary of state website for the Recipient's jurisdiction of formation and must generally be dated within 180 days prior to the Federal Award Date of the Assistance Agreement. Due to potential backlogs in state government offices, Applicants are advised to submit requests for certificates of good standing no later than 60 days after they submit their Applications.

2. Closing: Pursuant to the Assistance Agreement, there will be an initial closing at which point the Assistance Agreement and related documents will be properly executed and delivered, and an initial payment of FA or TA may be made. FA Recipients that are subject to the Matching Funds requirement will not receive a payment until 100% of their Matching Funds are In-Hand. The first payment is the estimated amount of the award that the Recipient states in its Application that it will use for eligible FA or TA activities in the first 12 months after the award announcement. The first payment request amount entered in the Application must be greater than zero. The CDFI Fund reserves the right to increase the first payment amount on any award to ensure that any subsequent payments are at least $25,000 for FA and $5,000 for TA awards.

The CDFI Fund will minimize the time between the Recipient incurring costs for eligible activities and award payment(s) in accordance with the Uniform Requirements. Advanced payments for eligible activities will occur no more than one year in advance of the Recipient incurring costs for the eligible activities. Following the initial closing, there may be subsequent closings involving additional award payments. Any documentation in addition to the Assistance Agreement that is connected with such subsequent closings and payments shall be properly executed and timely delivered by the Recipient to the CDFI Fund.

3. Requirements Prior to Entering into an Assistance Agreement: If, prior to entering into an Assistance Agreement, information (including administrative errors) comes to the CDFI Fund's attention that: adversely affects the Recipient's eligibility for an award; adversely affects the Recipient's CDFI Certification (to the extent that the award is conditional upon CDFI Certification); adversely affects the CDFI Fund's evaluation of the Application; indicates that the Recipient is not in compliance with any requirement listed in the Uniform Requirements; indicates that the Recipient is not in compliance with a term or condition of any prior Award Agreement, Assistance Agreement, and/or Allocation Agreement from the CDFI Fund; indicates the Recipient has failed to execute and return a prior round Assistance Agreement to the CDFI Fund within the CDFI Fund's deadlines; or indicates fraud or mismanagement on the Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the award or take such other actions as it deems appropriate. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to return the Assistance Agreement, signed by the Authorized Representative of the Recipient, and/or provide the CDFI Fund with any requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA pending the criteria described in Table 18.

TABLE 18—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT

Requirement	Criteria
Failure to meet reporting requirements.	• If a Recipient received a prior award or allocation under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, as of the date of the notice of award, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a payment of award, until said prior Recipient or allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. • If such a prior Recipient or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the award made under this NOFA. • Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete, nor that it met reporting requirements.
Failure to maintain CDFI Certification.	• An FA Recipient must be a Certified CDFI prior to the award announcement date. • If an FA Recipient fails to maintain CDFI Certification, the CDFI Fund will not execute the Assistance Agreement and will terminate and rescind the award made under this NOFA. • If a TA Recipient is a Certified CDFI at the time of award announcement, it must maintain CDFI Certification. • If a Certified CDFI TA Recipient fails to maintain CDFI Certification, the CDFI Fund will not execute the Assistance Agreement and will terminate and rescind the award made under this NOFA.
Pending resolution of noncompliance.	• The CDFI Fund will delay entering into an Assistance Agreement with a prior Recipient or allocatee that has pending noncompliance or default issues with any of its previously executed CDFI Fund award(s), allocation(s), bond loan agreement(s), or agreement(s) to guarantee.

TABLE 18—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT—Continued

Requirement	Criteria
	• If said prior Recipient or allocatee is unable satisfactorily resolve the compliance issues, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the award made under this NOFA.
Noncompliance or default status	• If, at any time prior to entering into an Assistance Agreement, the CDFI Fund determines that a Recipient is noncompliant or found in default with any previously executed CDFI Fund award(s), allocation (s), bond loan agreement(s), or agreement(s) to guarantee, and the CDFI Fund has provided written notification that the Recipient is ineligible to apply for or receive any future awards or allocations for a time period specified by the CDFI Fund in writing, the CDFI Fund may delay entering into an Assistance Agreement until the Recipient has cured the noncompliance and/or default by taking actions the CDFI Fund has specified within such specified timeframe. If the Recipient is unable to cure the noncompliance and/or default within the specified timeframe, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Compliance with federal civil rights requirements.	• If, within the period starting three years prior to this NOFA and through the date of the Assistance Agreement, the Recipient received a final determination, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient violated any federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. The CDFI Fund will delay entering into an Assistance Agreement with a Recipient that has pending Title VI noncompliance issues, if the CDFI Fund has not yet made a final compliance determination.
	• If the Recipient is unable to satisfactorily resolve the Title VI noncompliance issues, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
	• The Title VI Compliance Worksheet and program award terms and conditions do not impose anti-discrimination requirements on Tribal governments beyond what would otherwise apply under federal law.
Do Not Pay	• The Do Not Pay Business Center was developed to support federal agencies in their efforts to reduce the number of improper payments made through programs funded by the federal government.
	• The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient (or Affiliate of a Recipient) is determined to be ineligible based on data in the Do Not Pay database.
Safety and soundness	• If it is determined the Recipient is, or will be, incapable of meeting its award obligations, the CDFI Fund will deem the Recipient to be ineligible or require it to improve its safety and soundness prior to entering into an Assistance Agreement.

C. Reporting:

1. Reporting requirements: On an annual basis during the Period of Performance, the CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the following components (Annual Reporting Requirements):

TABLE 19—ANNUAL REPORTING REQUIREMENTS *

Financial Statement Audit Report (Non-profit Recipient including Insured Credit Unions and State-Insured Credit Unions).	A Non-profit Recipient (including Insured Credit Unions and State-Insured Credit Unions) must submit a Financial Statement Audit (FSA) Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. Under no circumstances should this be construed as the CDFI Fund requiring the Recipient to conduct or arrange for additional audits not otherwise required under Uniform Requirements or otherwise prepared at the request of the Recipient or parties other than the CDFI Fund.
Financial Statement Audit Report (For-Profit Recipient)	For-profit Recipients must submit an FSA Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant.
Financial Statement Audit Report (Depository Institution Holding Company and Insured Depository Institution).	If the Recipient is a Depository Institution Holding Company or an Insured Depository Institution, it must submit an FSA Report in AMIS.
Single Audit Report (Non-Profit Recipients, if applicable)	A non-profit Recipient must complete an annual Single Audit pursuant to the Uniform Requirements (see 2 CFR Subpart F-Audit Requirements) if it expends $750,000 or more in Federal awards in its fiscal year, or such other dollar threshold established by OMB pursuant to 2 CFR 200.501. If a Single Audit is required, it must be submitted electronically to the Federal Audit Clearinghouse (FAC) (see 2 CFR Subpart F-Audit Requirements in the Uniform Requirements) and optionally through AMIS.
Federal Financial Report/OMB Standard Form 425 (SF–425)	The Recipient must annually submit the SF–425 Federal Financial Report to the CDFI Fund through AMIS to disclose how much of the CDFI Program award funds were expended during the federal government's fiscal year of October 1 through September 30.
Transaction Level Report (TLR)	The Recipient must submit a TLR to the CDFI Fund through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a TLR. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a TLR. The TLR is not required for TA Recipients.

TABLE 19—ANNUAL REPORTING REQUIREMENTS *—Continued

Uses of Award Report	The Recipient must submit the Uses of Award Report to the CDFI Fund in AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Uses of Award Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a Uses of Award Report.
Shareholders Report	If the Assistance is in the form of an Equity Investment, the Recipient must submit shareholder information to the CDFI Fund showing the class, series, number of shares and valuation of capital stock held or to be held by each shareholder. The Shareholders Report must be submitted for as long as the CDFI Fund is an equity holder. The Shareholders Report is submitted through AMIS.
Performance Progress Report	The Recipient must submit the Performance Progress Report through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Performance Progress Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a Performance Progress Report.
Annual Certification and Data Collection Report (ACR)	TA Recipients that are Certified at the time of award announcement and all FA Recipients must submit the ACR to the CDFI Fund through AMIS. If a TA Recipient is an uncertified CDFI at the time of award announcement, it must submit the ACR to the CDFI Fund through AMIS subsequent to obtaining CDFI Certification as per the ACR reporting schedule.

* Personally Identifiable Information (PII) is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of individual borrowers/residents of Distressed Communities in AMIS, Applicants should not include the following PII for the individuals who received the Financial Products or Financial Services in AMIS or in the supporting documentation (*i.e.,* name of the individual, Social Security Number, driver's license or state identification number, passport number, Alien Registration Number, etc.). This information should be redacted from all supporting documentation.

Each Recipient is responsible for the timely and complete submission of the Annual Reporting Requirements. The CDFI Fund reserves the right to contact the Recipient and additional entities or signatories to the Assistance Agreement to request additional information and/or documentation. The CDFI Fund will use such information to monitor each Recipient's compliance with the requirements of the Assistance Agreement and to assess the impact of the CDFI Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements, including increasing the scope and frequency of reporting, if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Recipients.

2. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with federal statutes, regulations, and the terms and conditions of the Federal award. These systems must be sufficient to permit the preparation of reports required by the CDFI Fund to ensure compliance with the terms and conditions of the CDFI Program, including the tracing of award funds to a level of expenditures adequate to establish that such award funds have been used in accordance with federal statutes, regulations, and the terms and conditions of the Federal award.

The cost principles used by Recipients must be consistent with federal cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the CDFI Program award. In addition, the CDFI Fund will require Recipients to: maintain effective internal controls; comply with applicable statutes, regulations, and the Assistance Agreement; evaluate and monitor compliance; take appropriate action when not in compliance; and safeguard personally identifiable information.

VII. Agency Contacts

A. The CDFI Fund will respond to questions concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA is published through the date listed in Table 1 and Table 12. The CDFI Fund strongly recommends Applicants submit questions to the CDFI Fund via an AMIS Service Request to the CDFI Program, Certification, Compliance Monitoring and Evaluation (CCME), or IT Help Desk. The CDFI Fund will post on its website responses to reoccurring questions received about the NOFA and Application. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.* Table 20 lists CDFI Fund contact information:

TABLE 20—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
CDFI Program	Service Request via AMIS	202–653–0421, option 1	*cdfihelp@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
CDFI Certification	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
AMIS—IT Help Desk	Service Request via AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*

B. Information Technology Support: For IT assistance, the preferred method of contact is to submit a Service Request within AMIS. For the Service Request, select ''Technical Issues'' from the Program dropdown menu of the Service Request. People who have visual or mobility impairments that prevent them from using the CDFI Fund's website should call (202) 653–0422 for assistance (this is not a toll free number).

C. Communication with the CDFI Fund: The CDFI Fund will use the contact information in AMIS to communicate with Applicants and Recipients. It is imperative, therefore, that Applicants, Recipients, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information such as contact names (especially for the Authorized Representative), email addresses, fax and phone numbers, and office locations.

D. Civil Rights and Equal Employment Opportunity: Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs or activities is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Equal Employment Opportunity enforces various federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of race, color, religion, national origin, age, sex, marital status, familial status, disability and/or reprisal, s/he may file a complaint with: Director, Office of Civil Rights and Equal Employment Opportunity, 1500 Pennsylvania Ave. NW, Washington, DC 20230 or (202) 622–1160 (not a toll-free number).

E. Statutory and National Policy Requirements: The CDFI Fund will manage and administer the Federal award in a manner to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, federal law, and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

VIII. Other Information

A. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. If applicable, the CDFI Fund may inform Applicants that they do not need to provide certain Application information otherwise required. Pursuant to the Paperwork Reduction Act, the CDFI Program, and NACA Program Application has been assigned the following control number: 1559–0021, inclusive of PPC–FA, DF–FA, and HFFI–FA.

B. Application Information Sessions: The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, visit the CDFI Fund's website at *http://www.cdfifund.gov.*

Authority: 12 U.S.C. 4701, *et seq;* 12 CFR parts 1805 and 1815; 2 CFR part 200.

Marcia Sigal,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–27138 Filed 12–8–23; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for Financial Assistance (FA) or Technical Assistance (TA) awards under the Native American CDFI Assistance (NACA Program) fiscal year (FY) 2024 Funding Round.

Funding Opportunity Number: CDFI–2024–NACA.

Catalog of Federal Domestic Assistance (Cfda) Number: 21.012.

Dates:

TABLE 1—FY 2024 NACA PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Submission method
Last day to create an AMIS Account (all Applicants)	January 16, 2024	11:59 p.m. ET	AMIS.
Last day to enter Employer Identification Number (EIN) and Unique Entity Identifier (UEI) in AMIS (all Applicants).	January 16, 2024	11:59 p.m. ET	AMIS.
Last day to submit SF–424 Mandatory Form (Application for Federal Assistance).	January 16, 2024	11:59 p.m. ET	Electronically via *Grants.gov.*
Last day to contact NACA Program staff	February 13, 2024	5 p.m. ET	Service Request via AMIS or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only).	February 15, 2024	5 p.m. ET	Service Request via AMIS or 202–653–0422 or *AMIS@cdfi.treas.gov.*
Last day to submit Title VI Compliance Worksheet (all applicants) [1].	February 15, 2024	11:59 p.m. ET	AMIS.
Last day to submit NACA Program Application for Financial Assistance (FA) or Technical Assistance (TA).	February 15, 2024	11:59 p.m. ET	AMIS.
Last day to contact Certification, Compliance Monitoring and Evaluation (CCME) Help Desk regarding CDFI Certification Application for uncertified FA Applicants.	March 1, 2024	11:59 p.m. ET	Service Request[2] via the Awards Management Information System (AMIS).
Last day to submit CDFI Certification Applications for uncertified FA Applicants.	March 5, 2024	11:59 p.m. ET	AMIS.

Executive Summary: Through the NACA Program, the Community Development Financial Institutions (CDFI) Fund provides (i) FA awards of up to $2 million to Certified Community Development Financial Institutions (CDFIs) serving Native American, Alaska Native, or Native Hawaiian populations or Native American areas defined as federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau-designated Tribal Statistical Areas (collectively, ''Native Communities'') to build their financial capacity to lend to Eligible Markets and/or their Target Markets, and (ii) TA awards of up to $300,000 to build Certified, and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets, and Sponsoring Entities' ability to create Certified CDFIs that serve Native

[1] This requirement also applies to Applicants' prospective sub-recipients that are not direct beneficiaries of Federal financial assistance (*e.g.,* Depository Institution Holding Companies and their Subsidiary CDFI Insured Depository Institutions).

[2] Service Request shall mean a written inquiry or notification submitted to the CDFI Fund via AMIS.

Communities. All awards provided through this NOFA are subject to funding availability.

I. Program Description

A. History: The CDFI Fund was established by the Riegle Community Development Banking and Financial Institutions Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. The Native American CDFI Assistance (NACA) Program made its first awards in 2002, after the CDFI Program began making awards in 1996.

B. Priorities: Through the NACA Program's FA and TA awards, the CDFI Fund invests in and builds the capacity of for-profit and non-profit community based lending organizations known as CDFIs. These organizations, Certified as CDFIs by the CDFI Fund, serve Native Communities. *C. Authorizing Statutes and Regulations:* The CDFI Program is authorized by the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325, 12 U.S.C. 4701 *et seq.*) (Authorizing Statute). The regulations governing the NACA Program are found at 12 CFR parts 1805 and 1815 (the Regulations) and are used by the CDFI Fund to govern, in general, the NACA Program, setting forth evaluation criteria and other program requirements. The CDFI Fund encourages Applicants to review the Regulations; this NOFA; the NACA Program Application for Financial Assistance or Technical Assistance (the Application); all related materials and guidance documents found on the CDFI Fund's website (Application materials); and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury's codification of the Office of Management and Budget (OMB) government-wide framework for grants management at 2 CFR part 200 (the Uniform Requirements) for a complete understanding of the NACA Program. Capitalized terms in this NOFA are defined in the Authorizing Statute, the Regulations, this NOFA, the Application, Application materials, or the Uniform Requirements. Details regarding Application content requirements are found in the Application and Application materials.

D. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000): The Uniform Requirements codify financial, administrative, procurement, and program management standards that Federal award agencies must follow. When evaluating Applications, awarding agencies must evaluate the risks posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, the soundness of its business plan, history of performance, ability to achieve measurable impacts through its products and services, and audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award compliance requirements for Recipients.

E. Funding limitations: The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund also reserves the right to reallocate funds from the amount that is anticipated to be available through this NOFA to other CDFI Fund initiatives that are designed to benefit Native Communities, particularly if the CDFI Fund determines that the number of awards made through this NOFA is fewer than projected.

II. Federal Award Information

A. Funding Availability:

1. FY 2024 Funding Round: Subject to final appropriations, the CDFI Fund expects to award, through this NOFA, approximately $50 million as indicated in the following table:

TABLE 2—FY 2024 FUNDING ROUND ANTICIPATED CATEGORY AMOUNTS

Funding categories (see definition in Table 7 for TA or Table 8 for FA)	Estimated total amount to be awarded (millions) FY 2024	Award amount		Estimated number of awards FY 2024	Estimated average amount to be awarded FY 2024	Average amount awarded in FY 2022
		Minimum	Maximum			
Base-FA	$36.5	$150,000	$2,000,000	20	$1,826,000	$900,000
Persistent Poverty Counties—Financial Assistance (PPC–FA)	6.3	100,000	600,000	11	571,000	280,000
TA	7.2	10,000	400,000	18	400,000	150,000
Total (Base-FA, PPC–FA, and TA)	50.0			49		
Disability Funds—Financial Assistance (DF–FA)*	20.0	100,000	1,000,000	20	1,000,000	500,000
Healthy Food Financing Initiative—Financial Assistance (HFFI–FA)*	48.0	500,000	10,000,000	10	4,800,000	2,875,000

*DF–FA and HFFI–FA appropriation will be allocated in one competitive round between the NACA and CDFI Program NOFAs.

The CDFI Fund reserves the right to award more or less than the amounts cited above in each category, based upon available funding and other factors, as appropriate.

2. Funding Availability for the FY 2024 Funding Round: Funds for the FY 2024 Funding Round are a combination of appropriations from FY 2023 and FY 2024. FY 2023 funds were appropriated as part of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), but FY 2024 funds are subject to change based on passage of a final FY 2024 appropriations bill. If Congress does not appropriate funds for FY 2024, the award estimates set forth above may be reduced. If funds are appropriated for FY 2024, the amount of such funds may be greater or less than the amounts set forth above. The CDFI Fund reserves the right to contact Applicants to seek additional information in the event that final FY 2024 appropriations for the NACA Program change any of the requirements of this NOFA. As of the date of this NOFA, the CDFI Fund is operating under a continuing funding resolution as enacted by the Further Continuing Appropriations and Other Extensions Act, 2024 (Pub. L. 118–22).

3. Anticipated Start Date and Period of Performance: The Period of Performance for TA awards begins with the date of the award announcement and includes either (i) an Emerging CDFI Recipient's three full consecutive fiscal years after the date of the award announcement, or (ii) a Certified CDFI

Recipient's two full consecutive fiscal years after the date of the award announcement, or (iii) a Sponsoring Entity Recipient's four full years after the date of the award announcement, during which the Recipient must meet the Performance Goals and Measures (PG&Ms) set forth in the Assistance Agreement. The Period of Performance for FA awards begins with the date of the award announcement and includes a Recipient's three full consecutive fiscal years after the date of the award announcement, during which time the Recipient must meet the PG&Ms set forth in the Assistance Agreement.

B. Types of Awards: Through the NACA Program, the CDFI Fund provides two types of awards: Financial Assistance (FA) and Technical Assistance (TA) awards. An Applicant may submit an Application for a TA award or an FA award under the NACA Program, but not both. FA awards include the Base Financial Assistance (Base-FA) award and the following awards that are provided as a supplement to the Base-FA award: Healthy Food Financing Initiative-Financial Assistance (HFFI–FA), Persistent Poverty Counties-Financial Assistance (PPC–FA), and Disability Funds-Financial Assistance (DF–FA). The HFFI–FA, PPC–FA, and DF–FA Applications will be evaluated independently from the Base-FA Application, and will not affect the Base-FA Application evaluation or Base-FA award amount.

However, Applicants that qualify for the NACA Program may submit two Applications: one Application (either for a TA award or an FA award, but not both) through the CDFI Program, and one Application (either for a TA award or an FA award, but not both) through the NACA Program. NACA qualified Applicants that choose to apply for awards through both the CDFI Program and the NACA Program may either apply for the same type of award under each Program or for a different type of award under each Program. NACA qualified FA Applicants that choose to apply for an FA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the FA award under the CDFI Program. NACA qualified TA Applicants that choose to apply for a TA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the TA award under the NACA Program. NACA qualified Applicants that choose to apply for a TA award and an FA award under separate programs and are selected for an award under both Programs will be provided the larger of the two awards. NACA Applicants cannot receive an award under both Programs within the same funding round.

The Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261) permanently waived the Matching Funds [3] requirement for Native American CDFIs,[4] and as a result, Native American CDFI FA Applicants are not required to provide Matching Funds. Additionally, TA Applicants are not required to provide Matching Funds.

1. Base-FA Awards: Base-FA awards are provided in the form of a grant. The CDFI Fund reserves the right, in its sole discretion, to provide a Base-FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

2. Persistent Poverty Counties—Financial Assistance (PPC–FA) Awards: PPC–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that are selected to receive a Base-FA award through the NACA Program FY 2024 Funding Round will be eligible to receive a PPC–FA award. PPC–FA awards are provided in the form of a grant. The CDFI Fund reserves the right, in its sole discretion, to provide a PPC–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

3. Disability Funds—Financial Assistance (DF–FA) Awards: DF–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the NACA Program FY 2024 Funding Round will be eligible to receive a DF–FA award. DF–FA awards are provided in the form of a grant to Native American CDFIs. The CDFI Fund reserves the right, in its sole discretion, to provide a DF–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

4. Healthy Food Financing Initiative—Financial Assistance (HFFI–FA) Awards: HFFI–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the NACA Program FY 2024 Funding Round will be eligible to receive an HFFI–FA award. HFFI–FA awards are provided in the form of a grant to Native American CDFIs. The CDFI Fund reserves the right, in its sole discretion, to provide an HFFI–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

5. TA Awards: TA is provided in the form of grants. The CDFI Fund reserves the right, in its sole discretion, to provide a TA award in an amount other than that which the Applicant requests; however, the TA award amount will not exceed the Applicant's request as stated in its Application.

C. Eligible Activities:

1. FA Awards: Base-FA, PPC–FA, DF–FA, and HFFI–FA award funds may be expended for activities serving Commercial Real Estate, Small Business, Microenterprise, Community Facilities, Consumer Financial Products, Consumer Financial Services, Commercial Financial Products, Commercial Financial Services, Affordable Housing, Intermediary Lending to Non-Profits and CDFIs, Climate-Centered Financing, and other lines of business as deemed appropriate by the CDFI Fund in the following five categories: (i) Financial Products; (ii) Financial Services; (iii) Loan Loss Reserves; (iv) Development Services; [5] and (v) Capital Reserves. The FA Budget is the amount of the award and must be expended in the five eligible activity categories prior to the end of the Budget Period.[6] None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Base-FA Recipients must meet PG&Ms, which will be derived from projections and attestations provided by the Applicant in its Application, to achieve one of the following FA Objectives: (i) Increase Volume of

[3] Matching Funds shall mean funds from sources other than the federal government as defined in accordance with the CDFI Program Regulations at 12 CFR 1805.500.

[4] A Native American CDFI (Native CDFI) is one that Primarily Serves a Native Community. Primarily Serves is defined as 50% or more of an Applicant's activities being directed to a Native Community.

[5] Although some financial education for youth under 18 years old do not fall under the definition of Development Services and thus is not eligible to support Certification, the CDFI Fund allows FA award funds to be used to provide such financial education. Financial education for youth means education designed to prepare youth to engage with the financial system. This includes accessing Financial Products when they are legally able to and accessing Financial Services offered by the Applicant or a third party.

[6] Budget Period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which Recipients are authorized to expend the funds awarded.

Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market and/or Increase Volume of Financial Services in an Eligible Market(s) and/or in the Applicant's approved Target Market; (ii) Serve Eligible Market(s) or the Applicant's approved Target Market in New Geographic Area or Areas; (iii) Provide New Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market; and (iv) Serve New Targeted Population or Populations. At the end of each year of the Period of Performance, 50% or more of the Financial Products closed by NACA Recipients must be in Native Communities. FA awards may only be used for Direct Costs associated with an eligible activity; no indirect expenses are allowed. Up to 15% of the FA award may be used for Direct Administrative Expenses associated with an eligible FA activity. ''Direct Administrative Expenses'' shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Requirements, which are incurred by the Recipient to carry out the Financial Assistance. Direct Costs incurred to provide Development Services or Financial Services do not constitute Direct Administrative Expenses.

The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements,[7] with respect to any Direct Costs. For purposes of this NOFA, the five eligible activity categories are defined in Table 3.

TABLE 3—BASE-FA, PPC–FA, DF–FA, AND HFFI–FA ELIGIBLE ACTIVITY CATEGORIES

FA Eligible activity	FA eligible activity definition *	Eligible CDFI institution types
i. Financial Products	FA expended as loans, Equity Investments and similar financing activities (as determined by the CDFI Fund) including the purchase of loans originated by Certified CDFIs and the provision of loan guarantees. In the case of CDFI Intermediaries, Financial Products may also include loans to CDFIs and/or Emerging CDFIs, and deposits in Insured Credit Union CDFIs, Emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs. For HFFI–FA, however, financing for prepared food outlets are not eligible activities, including the purchase of loans originated by Certified CDFIs, loan refinancing, or any other type of financing for prepared food outlets.	All.
ii. Financial Services	FA expended for providing checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services.	Regulated Institutions [8] only. Not applicable for HFFI–FA Recipients.
iii. Loan Loss Reserves	FA set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable or for related purposes that the CDFI Fund deems appropriate.	All.
iv. Development Services	FA expended for activities undertaken by a CDFI, its Affiliate or contractor that (i) promote community development and (ii) prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services. For example, such activities include financial or credit counseling; homeownership counseling; business planning; and management assistance.	All.
v. Capital Reserves	FA set aside as reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or providing financing, or for related purposes as the CDFI Fund deems appropriate.	Regulated Institutions only. Not applicable for DF–FA.

* All FA eligible activities must be in an Eligible Market or the Applicant's approved Target Market. Eligible Market is defined as (i) a geographic area meeting the requirements set forth in 12 CFR 1805.201(b)(3)(ii), or (ii) individuals that are Low-Income, African American, Hispanic, Native American, Native Hawaiian, Alaska Native, Other Pacific Islander, Filipino, Vietnamese, or Persons with Disabilities.

2. DF–FA Award: DF–FA award funds may only be expended for eligible FA activities (referenced in Table 3) to directly or indirectly benefit individuals with disabilities. The DF–FA Recipient must close Financial Products for the primary purpose of directly or indirectly benefiting people with disabilities, where the majority of the DF–FA supported loans or investments benefit individuals with disabilities, in an amount equal to or greater than 85% of the total DF–FA provided. Eligible DF–FA financing activities may include, among other activities, loans to develop or purchase affordable, accessible, and safe housing; loans to provide or facilitate employment opportunities; and loans to purchase assistive technology.

For the purposes of DF–FA, a person with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a record of such an impairment, or a person who is regarded as having such an impairment, as defined by the Americans with Disabilities Act (ADA), 42 U.S.C. 12102.

3. HFFI–FA Award: HFFI–FA award funds may only be expended for eligible FA activities referenced in Table 3. The HFFI–FA investments must comply with the following guidelines:

a. Recipient must close Financial Products for Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets in its approved Target Market in an amount equal to or greater than 100% of the total HFFI Financial Assistance provided. Eligible financing activities to Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets require that the majority of the loan or investment be devoted to offering a range of Healthy Food choices, which may include, among other activities, investments supporting an existing retail store or wholesale operation upgrade to offer an expanded range of Healthy Food choices, or supporting a nonprofit organization that expands the availability of Healthy Foods in underserved areas.

b. Recipient must demonstrate that it has closed Financial Products to

[7] § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any Subsidiary or Affiliate of such entities).

[8] Regulated Institutions include Insured Credit Unions, Insured Depository Institutions, State-Insured Credit Unions and Depository Institution Holding Companies.

Healthy Food Retail Outlets located in Food Deserts in the Recipient's approved Target Market in an amount equal to 75% of the total HFFI Financial Assistance provided.

Definitions:

Healthy Foods: Healthy Foods include unprepared nutrient-dense foods and beverages as set forth in the USDA Dietary Guidelines for Americans 2020–2025 including whole fruits and vegetables, whole grains, fat free or low-fat dairy foods, lean meats and poultry (fresh, refrigerated, frozen or canned). Healthy Foods should have low or no added sugars, and be low-sodium, reduced sodium, or no-salt-added. (See USDA Dietary Guidelines: *http://www.dietaryguidelines.gov*).

Healthy Food Retail Outlets: Commercial sellers of Healthy Foods including, but not limited to, grocery stores, mobile food retailers, farmers markets, retail cooperatives, corner stores, bodegas, stores that sell other food and non-food items along with a range of Healthy Foods.

Healthy Food Non-Retail Outlets: Wholesalers of Healthy Foods including, but not limited to, wholesale food outlets, wholesale cooperatives, or other non-retail food producers that supply for sale a range of Healthy Food options; entities that produce or distribute Healthy Foods for eventual retail sale, and entities that provide consumer education regarding the consumption of Healthy Foods.

Food Deserts: Distressed geographic areas where either a substantial number or share of residents has low access to a supermarket or large grocery store. For the purpose of satisfying this requirement, a Food Desert must either: (1) be a census tract determined to be a Food Desert by the U.S. Department of Agriculture (USDA), in its USDA Food Access Research Atlas; (2) be a census tract adjacent to a census tract determined to be a Food Desert by the USDA, in its USDA Food Access Research Atlas; which has a median family income less than or equal to 120% of the applicable Area Median Family Income; or (3) be a Geographic Unit as defined in 12 CFR part 1805.201(b)(3)(ii)(B), which (i) individually meets at least one of the criteria in 12 CFR part 1805.201(b)(3)(ii)(D), and (ii) has been identified as having low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.

4. PPC–FA Award: PPC–FA award funds may only be expended for eligible FA activities referenced in Table 3. The PPC–FA Recipient must close Financial Products in PPC: 1) in an Eligible Market or in the Applicant's approved Target Market and 2) in an amount equal to or greater than 100% of the total PPC–FA award. The specific counties that meet the criteria for ''persistent poverty'' can be found at: *https://www.cdfifund.gov/sites/cdfi/files/2023-03/PPC_2020_ACS_Jan20_2023.xlsx*.

5. TA Awards: TA award funds may be expended for the following eight eligible activity categories: (i) Compensation—Personal Services; (ii) Compensation—Fringe Benefits; (iii) Professional Service Costs; (iv) Travel Costs; (v) Training and Education Costs; (vi) Equipment; (vii) Supplies; and (viii) Incorporation Costs. Only Sponsoring Entities may use TA award funds for Incorporation Costs. The TA Budget is the amount of the award and must be expended in the eight eligible activity categories before the end of the Budget Period. None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Any expenses that are prohibited by the Uniform Requirements are unallowable and are generally found in Subpart E-Cost Principles. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs. For purposes of this NOFA, the eight eligible activity categories are defined in Table 4.

TABLE 4—TA ELIGIBLE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM REQUIREMENTS

(i) Compensation—Personal Services.	TA paid to cover all remuneration paid currently or accrued, for services of Applicant's employees rendered during the Period of Performance under the TA award, in accordance with section 2 CFR 200.430 of the Uniform Requirements, is allowed. Any work performed directly but unrelated to the purposes of the TA award may not be paid as Compensation through a TA award. For example, the salaries for building maintenance would not carry out the purpose of a TA award and would be deemed unallowable.
(ii) Compensation—Fringe Benefits	TA paid to cover allowances and services provided by the Applicant to its employees as Compensation in addition to regular salaries and wages, in accordance with section 2 CFR 200.431 of the Uniform Requirements, is allowed. Such expenditures are allowable, as long as they are made under formally established and consistently applied organizational policies of the Applicant.
(iii) Professional Service Costs	TA paid to cover professional and consultant services (*e.g.*, such as strategic and marketing plan development), rendered by persons who are members of a particular profession or possess a special skill (*e.g.,* credit analysis, portfolio management), and who are not officers or employees of the Applicant, in accordance with section 2 CFR 200.459 of the Uniform Requirements, is allowed. Payment for a consultant's services may not exceed the current maximum of the daily equivalent rate paid to an Executive Schedule Level IV federal employee. Professional and consultant services must build the capacity of the CDFI. For example, professional services that provide direct Development Services to the customers do not build the capacity of the CDFI to provide those services and would not be eligible. The Applicant must comply, as applicable, with section 2 CFR 200.216 of the Uniform Requirements, with respect to payment of Professional Service Costs.
(iv) Travel Costs	TA paid to cover costs of transportation, lodging, subsistence, and related items incurred by the Applicant's personnel who are on travel status on business related to the TA award, in accordance with section 2 CFR 200.475 of the Uniform Requirements, is allowed. Travel Costs do not include costs incurred by the Applicant's consultants who are on travel status. Any payments for travel expenses incurred by the Applicant's personnel but unrelated to carrying out the purpose of the TA award would be deemed unallowable. As such, documentation must be maintained that justifies the travel as necessary to the TA award.
(v) Training and Education Costs ...	TA paid to cover the cost of training and education provided by the Applicant for employees' development, in accordance with section 2 CFR 200.473 of the Uniform Requirements, is allowed. TA can only be used to pay for training costs incurred by the Applicant's employees. Training and Education Costs may not be incurred by the Applicant's consultants.

TABLE 4—TA ELIGIBLE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM REQUIREMENTS—Continued

(vi) Equipment ..... over tangible personal property with a per unit acquisition cost of less than $5,000, in accordance with section 2 CFR 200.1 of the Uniform Requirements, is allowed. For example, a desktop computer costing $1,000 is allowable as a Supply cost. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to the purchase of Supplies..	TA paid to cover tangible personal property, having a useful life of more than one year and a per-unit acquisition cost of at least $5,000, in accordance with section 2 CFR 200.1 of the Uniform Requirements, is allowed. For example, items such as office furnishings and information technology systems are allowable as Equipment costs. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to the purchase of Equipment.
(viii) Incorporation Costs (*Sponsoring Entities only*).	TA paid to cover incorporation fees in connection with the establishment or reorganization of an organization as a CDFI, in accordance with section 2 CFR 200.455 of the Uniform Requirements, is allowed. Incorporation Costs are allowable for NACA Program Sponsoring Entity Applicants only.

III. Eligibility Information

A. Eligible Applicants: For the purposes of this NOFA, Table 5 through Table 8 set forth the eligibility criteria to receive an award from the CDFI Fund, along with certain definitions of terms. There are four categories of Applicant eligibility criteria: (1) CDFI Certification criteria (Table 5); (2) requirements that apply to all Applicants (Table 6); (3) requirements that apply to TA Applicants (Table 7); and (4) requirements that apply to FA Applicants (Table 8).

TABLE 5—CDFI CERTIFICATION CRITERIA DEFINITIONS

Certified CDFI	An entity that the CDFI Fund has officially notified that it meets all CDFI Certification requirements.
Certifiable CDFI (FA Applicants)	• An FA Applicant that has submitted a CDFI Certification Application to the CDFI Fund by the deadline specified in this NOFA demonstrating that it meets the CDFI Certification requirements, but has not yet been officially Certified. (See Table 12 for Application submission deadlines.) • The CDFI Fund will not enter into an Assistance Agreement unless the Applicant's pending CDFI Certification Application is approved by the CDFI Fund prior to the award announcement date. • The CDFI Fund will make CDFI Certification determinations for all Applicants that are Certifiable CDFIs prior to the award announcement date. If the CDFI Certification Application is denied, the Applicant will not be eligible to receive an FA award. There is no right to appeal an Award denial based on denial of the pending CDFI Certification Application.
Emerging CDFI (TA Applicants)	• A non-Certified entity that demonstrates to the CDFI Fund in its Application that it has an acceptable plan to meet CDFI Certification requirements by the end of its Period of Performance, or another date that the CDFI Fund selects. • An Emerging CDFI may or may not have a pending CDFI Certification Application with the CDFI Fund. • An Emerging CDFI that has prior award(s) must comply with CDFI Certification PG&M(s) stated in its prior Assistance Agreement(s). • An Emerging CDFI selected to receive a TA award will be required to become a Certified CDFI by a date specified in the Assistance Agreement.
Sponsoring Entity	• Sponsoring Entities include any legal organization that primarily serves a Native Community with ''primary'' meaning, at least 50% of its activities are directed toward the Native Community. • An eligible organization that proposes to create a separate legal organization that will become a Certified CDFI serving Native Communities. • Each Sponsoring Entity selected to receive a TA award will be required to create a CDFI and ensure that this newly created CDFI becomes Certified by the dates specified in the Assistance Agreement.
Definition of Native Other Targeted Population as Target Market.	The CDFI Fund uses the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented: • American Indian, Native American, or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; and • Native Hawaiian: A person having origins in any of the original peoples of Hawaii.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS

Applicant	• An Applicant must be duly organized as a legal entity (within the United States or its territories). • Only the entity that will carry out the proposed award activities may apply for an award (other than Depository Institution Holding Companies (DIHC) [9]—see below, and Sponsoring Entities). Recipients may not create a new legal entity to carry out the proposed award activities (except for Sponsoring Entities).

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS—Continued

	• The information in the Application should only reflect the activities of the Applicant, including the presentation of financial and portfolio information (other than DIHCs see below). Do not include financial or portfolio information from parent companies, Affiliates, or Subsidiaries in the Application unless it relates to the provision of Development Services. • An Applicant that applies on behalf of another organization will be rejected without further consideration, other than DIHCs (see below).
Application type and submission overview through *Grants.gov* and Awards Management Information System (AMIS).	• Applicants must submit the Required Application Documents listed in Table 10. • The CDFI Fund will only accept Applications that use the official Application templates provided on the *Grants.gov* and AMIS websites. Applications submitted with alternative or altered templates will not be considered. • Applicants undergo a two-step process that requires the submission of Application documents by two separate deadlines in two different systems: (1) the SF–424 in *Grants.gov* and (2) all other Required Application Documents in AMIS. • *Grants.gov* and the SF–424: ○ *Grants.gov:* Applicants must submit the Standard Form (SF) SF–424, Application for Federal Assistance. ○ All Applicants must register in the *Grants.gov* system to successfully submit an Application. The *Grants.gov* registration process can take 30 days or more to complete. The CDFI Fund strongly encourages Applicants to register as early as possible. ○ The CDFI Fund will not extend the SF–424 application deadline for any Applicant that started the *Grants.gov* registration process on, before, or after the date of the publication of this NOFA, but did not complete it by the deadline except in the case of a federal government administrative or technological error that directly resulted in a late submission of the SF–424. ○ The SF–424 must be submitted in *Grants.gov* on or before the deadline listed in Table 1 and Table 12. Applicants are strongly encouraged to submit their SF–424 as early as possible in the *Grants.gov* system. ○ The deadline for the *Grants.gov* submission is before the AMIS submission deadline. ○ The SF–424 must be submitted under the NACA Program Funding Opportunity Number for the NACA Program Application. *NACA Program Applicants should be careful to not select the CDFI Program Funding Opportunity Number when submitting their SF–424 for the NACA Program.* NACA Program Applicants that submit their SF–424 for the NACA Program Application under the CDFI Program Funding Opportunity Number will be deemed ineligible for the NACA Program Application. ○ If the SF–424 is not accepted by *Grants.gov* by the deadline, the CDFI Fund will not review any material submitted in AMIS and the Application will be deemed ineligible. • AMIS and all other Required Application Documents listed in Table 10: ○ AMIS is an enterprise-wide information technology system. Applicants will use AMIS to submit and store organization and Application information with the CDFI Fund. ○ Applicants are only allowed one NACA Program Application submission in AMIS. ○ Each Application in AMIS must be signed by an Authorized Representative. ○ Applicants must ensure that the Authorized Representative is an employee or officer of the Applicant, authorized to sign legal documents on behalf of the organization. *Consultants working on behalf of the organization may not be designated as Authorized Representatives.* ○ Only the Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. ○ All Required Application Documents must be submitted in AMIS on or before the deadline specified in Tables 1 and 12. The CDFI Fund will not extend the deadline for any Applicant except in the case of a federal government administrative or technological error that directly resulted in the late submission of the Application in AMIS.
Employer Identification Number (EIN)	• Applicants must have a unique EIN assigned by the Internal Revenue Service (IRS). • The CDFI Fund will reject an Application submitted with the EIN of a parent or Affiliate organization. • The EIN in the Applicant's AMIS account must match the EIN in the Applicant's System for Award Management (SAM) account. The CDFI Fund reserves the right to reject an Application if the EIN in the Applicant's AMIS account does not match the EIN in its SAM account. • Applicants must enter their EIN into their AMIS profile on or before the deadline specified in Tables 1 and 12.
Unique Entity Identifier (UEI)	• The transition from the Dun and Bradstreet Universal Numbering System (DUNS) to UEI is a federal government-wide initiative. • An Applicant must apply using its UEI in *Grants.gov*. • The CDFI Fund will reject an Application submitted with the UEI of a parent or Affiliate organization. • The UEI in the Applicant's AMIS account must match the UEI in the Applicant's *Grants.gov* and SAM accounts. The CDFI Fund will reject an Application if the UEI in the Applicant's AMIS account does not match the UEI in its *Grants.gov* and SAM accounts. • Applicants must enter their UEI into their AMIS profile on or before the deadline specified in Tables 1 and 12.
System for Award Management (SAM) ...	• SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. • Applicants must register in SAM as part of the *Grants.gov* registration process. • Applicants that have an active SAM registration have been assigned a UEI. Applicants must also have an EIN in order to register in SAM. • Applicants must be registered in SAM in order to submit an SF–424 in *Grants.gov*. • The CDFI Fund reserves the right to deem an Application ineligible if the Applicant's SAM account expires during the Application evaluation period, or is set to expire before September 30, 2024, and the Applicant does not re-activate, or renew, as applicable, the account within the deadlines that the CDFI Fund communicates to affected Applicants during the Application evaluation period.
AMIS Account	• Each Applicant must register as an organization in AMIS and submit all Required Application Documents listed in Table 10 through the AMIS system. • The Application of any organization that does not properly register in AMIS by the deadline set forth in Table 1—FY 2024 NACA Program Funding Round Critical Deadlines for Applicants—will be rejected without further consideration. • The Authorized Representative and/or Application Point of Contact must be included as ''users'' in the Applicant's AMIS account. • An Applicant that fails to properly register and update its AMIS account may miss important communication from the CDFI Fund and/or may not be able to successfully submit an Application.
501(c)(4) status	• Pursuant to 2 U.S.C. 1611, any 501(c)(4) organization that engages in lobbying activities is not eligible to receive a CDFI or NACA Program award.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS—Continued

Compliance with Nondiscrimination and Equal Opportunity Statutes, Regulations, and Executive Orders.	• An Applicant* may not be eligible to receive an award if proceedings have been instituted against it in, by, or before any court, governmental agency, or administrative body, and a final determination has been issued within the time period beginning three years prior to the publication of this NOFA until the execution of the Assistance Agreement that indicates the Applicant has violated any federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); Fair Housing Act (42 U.S.C. 3601 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107). • Applicants* will be required to submit the Title VI Compliance Worksheet (Worksheet) once annually to assist the CDFI Fund in determining whether Applicants are compliant with the Treasury regulations implementing Title VI of the Civil Rights Act (Title VI), set forth in 31 CFR part 22. These requirements are set forth in the United States Department of the Treasury regulations implementing Title VI located in 31 CFR part 22, Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of the Treasury. • In addition, an Applicant* must be compliant with federal civil rights requirements in order to be deemed eligible to receive an award from the CDFI Fund. The CDFI Fund will consider an Application submitted by an Applicant that has pending Title VI noncompliance issues, if the CDFI Fund has not yet made a final compliance determination. • The Title VI Compliance Worksheet and program award terms and conditions do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.
Depository Institution Holding Company Applicant.	• In the case where a CDFI Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary CDFI Insured Depository Institution, the Application must be submitted by the CDFI Depository Institution Holding Company and reflect the activities and financial performance of the Subsidiary CDFI Insured Depository Institution. • If a Depository Institution Holding Company and its Certified CDFI Subsidiary Insured Depository Institution (through which it will carry out the activities of the award) both apply for an award under this NOFA, only the Depository Institution Holding Company will receive an award, not both. In such instances, the Subsidiary Insured Depository Institution will be deemed ineligible. • Authorized Representatives of both the Depository Institution Holding Company and the Subsidiary CDFI Insured Depository Institution must certify that the information included in the Application represents that of the Subsidiary CDFI Insured Depository Institution, and that the award funds will be used to support the Subsidiary CDFI Insured Depository Institution for the eligible activities outlined in the Application.
Use of award	• All awards made through this NOFA must be used to support the Applicant's activities in at least one of the FA or TA Eligible Activity Categories (see Section II. (C)). • With the exception of Depository Institution Holding Company Applicants and Sponsoring Entities, awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent. The Recipient of any award made through this NOFA must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.
Requested award amount	• An Applicant must state its requested award amount in the Application in AMIS. An Applicant that does not include this amount will not be allowed to submit an Application.
Pending resolution of noncompliance	• If an Applicant that is a prior Recipient or allocatee under any CDFI Fund program: (i) has demonstrated it has been in noncompliance and/or default with a previous Assistance Agreement, Award Agreement, Allocation Agreement, bond loan agreement, or agreement to guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance and/or default.
Noncompliance or default status	• The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund award recipient or allocatee under any CDFI Fund program if, as of the AMIS Application deadline in this NOFA, (i) the CDFI Fund has made a final determination in writing that such Applicant is in noncompliance with or default of a previously executed Assistance Agreement, Award Agreement, Allocation Agreement, bond loan agreement, or agreement to guarantee, and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. • The CDFI Fund will not consider any Applicant that has defaulted on a loan from the CDFI Fund within five years of the Application deadline.
Debarment/Do Not Pay Verification	• The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant (or Affiliate of an Applicant) if the Applicant is delinquent on any Federal debt. • The Do Not Pay Business Center was developed to support federal agencies in their efforts to reduce the number of improper payments made through programs funded by the federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check.

*This requirement also applies to Applicants' prospective sub-recipients that are not direct beneficiaries of Federal financial assistance (*e.g.,* Depository Institutions Holding Companies and their Subsidiary CDFI Insured Depository Institutions).

TABLE 7—ELIGIBILITY REQUIREMENTS FOR TA APPLICANTS

CDFI Certification status	Certified CDFIs, Emerging CDFIs, or Sponsoring Entities (see definitions in Table 5). If a TA Applicant is a Certified CDFI at the time of application but loses its CDFI Certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered by the CDFI Fund.
Matching Funds	• Matching Funds documentation is not required for TA awards.
Limitation on Awards	• An Emerging CDFI serving Native Communities may not receive more than three TA awards as an uncertified CDFI. • A Sponsoring Entity is only eligible to apply for an award if (i) it does not have an active prior award or (ii) the CDFI Certification goal in its active award's Assistance Agreement has been satisfied and it proposes to create another CDFI that will serve one or more Native Communities.

[9] Depository Institution Holding Company or DIHC means a Bank Holding Company or a Savings and Loan Holding Company.

TABLE 7—ELIGIBILITY REQUIREMENTS FOR TA APPLICANTS—Continued

$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date. • The CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2022 funding round, as well as the requested FY 2024 award, excluding DF–FA and HFFI–FA awards.
Proposed Activities	• Applicants must propose to directly undertake eligible activities with TA awards. For example, an uncertified CDFI Applicant must propose to become Certified as part of its Application and a Certified CDFI Applicant must propose activities that build its capacity to serve its Target Market or an Eligible Market. • With the exception of Sponsoring Entities, Applicants may not propose to use a TA award to create a separate legal entity to become a Certified CDFI or otherwise carry out the TA award activities.
Regulated Institution	• Each Regulated Institution TA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''4''. • TA Applicants with CAMELS/CAMEL ratings of ''5'' will not be eligible for awards. • The CDFI Fund will not approve a TA award for an Applicant that has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant as well as the Subsidiary Insured Depository Institution. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.
Target Market	• TA Applicants must demonstrate that the Certified CDFI, Emerging CDFI, or the CDFI to be created by the Sponsoring Entity will primarily serve one or more Native Communities as its Target Market.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS

CDFI Certification status	• Each FA Applicant must be a Certified CDFI prior to the date of award announcement. • If a CDFI is uncertified as of the date of NOFA publication, it must have submitted an application for CDFI Certification by the applicable deadline in Table 12 or it will be deemed ineligible to receive an FA award. The CDFI Fund will not extend the deadline for any uncertified Applicant that did not submit the Certification Application by the deadline, except in the case of a federal government administrative or technological error that directly resulted in a late submission of the CDFI Certification Application. • The CDFI Fund will make CDFI Certification determinations for Certifiable Applicants prior to the award announcement date. If the CDFI Certification Application is denied, the Applicant will not be eligible to receive an FA award. • The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues with its Annual Certification and Data Collection Report (ACR) if the CDFI Fund has not yet made a final compliance determination. • If a Certified CDFI loses its CDFI Certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered by the CDFI Fund.
Activities in Native Communities	• For consideration under this NOFA, each FA Applicant must: ○ Demonstrate that at least 50% of its past activities were in one or more Native Communities; and ○ Describe how it will target its lending/investing activities to one or more Native Communities.
Target Market	• For consideration under this NOFA, an FA Applicant's CDFI Certification Target Market must have one or more of the following characteristics: ○ For qualifying with an *Investment Area,* the Applicant must demonstrate that the Investment Area approved for CDFI Certification is also a geographic area of federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau designated Tribal Statistical Areas; and/or ○ For qualifying with an Other Targeted Population (OTP), the applicant's Target Market approved for CDFI Certification must be an OTP of Native Americans or American Indians, including Alaska Natives and Native Hawaiians. • Any FA Applicant whose CDFI Certification Target Market does not meet either of the conditions above will not be eligible for an FA award under this NOFA.
Community Collaboration	• All FA Applicants must demonstrate strong community collaboration with Native Communities.
Matching Funds documentation	• Native American CDFIs are not required to provide Matching Funds.
$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the announcement date. • The CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2022 funding round, as well as the requested FY 2024 award, excluding DF–FA and HFFI–FA awards.
FA Applicants with Community Partners	• A NACA Applicant can apply for assistance jointly with a Community Partner. The CDFI Applicant must complete the NACA Program Application and address the Community Partnership in its business plan and other sections of the Application as specified in the Application materials. • The CDFI Applicant must be either a Certified or Certifiable CDFI as defined in Table 5. • An Application with a Community Partner must: ○ Describe how the NACA Applicant and Community Partner will each participate in the partnership and how the partnership will enhance eligible activities serving the Investment Area and/or Targeted Population. ○ Demonstrate that the Community Partnership activities are consistent with the strategic plan submitted by the NACA Applicant. • Assistance provided upon approval of an Application with a Community Partner shall only be entrusted to the NACA Applicant and shall not be used to fund any activity carried out directly by the Community Partner or an Affiliate or Subsidiary thereof.
Regulated Institution	• Each Regulated Institution FA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''3''. • FA Applicants with CAMELS/CAMEL ratings of ''4 or 5'' will not be eligible for awards. • The CDFI Fund will not approve an FA award for an Applicant that has a Community Reinvestment Act (CRA) assessment rating of below ''Satisfactory'' on its most recent examination. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant as well as the Subsidiary Insured Depository Institution.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS—Continued

	• The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.
PPC–FA	• All PPC–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; and ○ Provide a PPC–FA award request amount in AMIS.
DF–FA	• All DF–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; ○ Submit the DF–FA Application; and ○ Provide a DF–FA award request amount in AMIS.
HFFI–FA	• All HFFI–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; ○ Submit the HFFI–FA Application; and ○ Provide a HFFI–FA award request amount in AMIS.

B. Matching Funds Requirements: Native American CDFIs are not required to provide Matching Funds.

Table 9—Reserved

IV. Application and Submission Information

A. Address to Request an Application Package: Application materials can be found on the CDFI Fund's website at *www.cdfifund.gov/programs-training/Programs/native-initiatives.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov*. Paper versions of Application materials will only be provided if an Applicant cannot access the CDFI Fund's website.

B. Content and Form of Application Submission: All Applications must be prepared using the English language, and calculations must be computed in U.S. dollars. The following table lists the Required Application Documents for the FY 2024 Funding Round. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. Information submitted by the Applicant that the CDFI Fund has not specifically requested will not be reviewed or considered as part of the Application. Financial data, portfolio, and activity information provided in the Application should only include the Applicant's activities. Information submitted must accurately reflect the Applicant's activities (other than Depository Institution Holding Companies—see Table 6).

TABLE 10—REQUIRED APPLICATION DOCUMENTS

Application documents	Applicant type	Submission format
Active AMIS Account	All Applicants	AMIS.
SF–424	All Applicants	Fillable PDF in *Grants.gov*.
Title VI Compliance Worksheet	All Applicants	AMIS.
NACA Program Application Components: • Funding Application Detail. • Data, Charts, and Narrative sections as listed in AMIS and outlined in Application materials.	All Applicants	AMIS.
PPC–FA Application Components: • Funding Application Detail. • Narratives. • AMIS Charts.	PPC–FA Applicants	AMIS.
DF–FA Application Components: • Funding Application Detail. • Narratives. • AMIS Charts.	DF–FA Applicants	AMIS.
HFFI–FA Application Components: • Funding Application Detail, • Narratives. • AMIS charts.	HFFI–FA Applicants	AMIS.
Attachments to the Application		
Key Staff Resumes	All Applicants	PDF or Word document in AMIS.
Organizational Chart	All Applicants	PDF in AMIS.
Completed, final audited financial statements for the Applicant's Three Most Recent Historic Fiscal Years.	FA Applicants and TA Applicants, if available: loan funds, Venture Capital Funds*, and other non-Regulated Institutions.	PDF in AMIS.
Unaudited financial statements for Applicant's Three Most Recent Historic Years (required if available, and only if audited financial statements are not available).	FA and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Current Year to Date—September 30, 2023 Unaudited financial statements.	FA and TA Applicants: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.

TABLE 10—REQUIRED APPLICATION DOCUMENTS—Continued

Application documents	Applicant type	Submission format
Community Partnership Agreement	FA Applicants, if applicable	PDF or Word document in AMIS.

* A Venture Capital Fund is an organization that predominantly invests funds in businesses, typically in the form of either Equity Investments or subordinated debt with equity features such as revenue participation or warrants, and generally seeks to participate in the upside returns of such businesses in an effort to at least partially offset the risk of its investments.

C. Application Submission: The CDFI Fund has a two-step process that requires the submission of Required Application Documents (listed in Table 10) on separate deadlines and locations. The SF–424 must be submitted through *Grants.gov* and all other Required Application Documents through the AMIS system. The CDFI Fund will not accept Applications via email, mail, facsimile, or other forms of communication, except in extremely rare circumstances that have been pre-approved in writing by the CDFI Fund. The deadline for submitting the SF–424 is listed in Tables 1 and 12.

All Applicants must register in the *Grants.gov* system to successfully submit the SF–424. The *Grants.gov* registration process can take 45 days or longer to complete and the CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as early as possible (refer to the following link: *http://www.grants.gov/web/grants/register.html*). Since the *Grants.gov* registration process requires Applicants to have a UEI and an EIN, Applicants without these required items should allow for additional time to complete the *Grants.gov* registration process. The CDFI Fund will not extend the Application deadline for any Applicant that started the *Grants.gov* registration process but did not complete it by the deadline. An Applicant that has previously registered with *Grants.gov* must verify that its registration is current and active. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process as the CDFI Fund does not maintain the *Grants.gov* system.

Each Application must be signed by a designated Authorized Representative in AMIS before it can be submitted. Applicants must ensure that an Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only a designated Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. If an Authorized Representative or Application Point of Contact does not submit the Application, the Application will be deemed ineligible.

D. Unique Entity Identifier (UEI): The UEI has replaced the Dun and Bradstreet Data Universal Numbering System (DUNS) number. The UEI, generated in the System for Award Management (*SAM.gov*), has become the official identifier for doing business with the federal government. This transition allows the federal government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government. If an entity is registered in *SAM.gov* today, its UEI has already been assigned and is viewable in *SAM.gov*, including inactive registrations. New registrants will be assigned a UEI as part of their SAM registration.

E. System for Award Management (SAM): Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM before submitting its Application. When accessing *SAM.gov*, users will be asked to create a *Login.gov* user account (if they don't already have one). Going forward, users will use their *Login.gov* username and password every time when logging into *SAM.gov*. Registration in SAM is required as part of the *Grants.gov* registration process. The SAM registration process may take one month or longer to complete. An original, signed notarized letter identifying the authorized entity administrator for the entity associated with the UEI is required. This requirement is applicable to new entities registering in SAM or an existing registration where there is no existing entity administrator. Existing entities with registered entity administrators do not need to submit an annual notarized letter. Applicants without an EIN should allow for additional time as an Applicant cannot register in SAM without an EIN. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Each Applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an Application under consideration by a federal awarding agency. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit the SF–424 in *Grants.gov* or Application in AMIS by the applicable Application deadlines. These restrictions also apply to organizations that have not yet received a UEI or EIN by the established deadline. Applicants must contact SAM directly with questions related to registration or SAM account changes as the CDFI Fund does not maintain this system and has no ability to make changes or correct errors of any kind. For more information about SAM, visit *https://www.sam.gov.*

TABLE 11—Grants.gov REGISTRATION TIMELINE SUMMARY

Step	Agency	Estimated minimum time to complete
Obtain an EIN	Internal Revenue Service (IRS)	Two (2) Weeks.*
Register in *SAM.gov*	System for Award Management (*SAM.gov*). This step will include obtaining a UEI.	Four (4) Weeks.*

TABLE 11—Grants.gov REGISTRATION TIMELINE SUMMARY—Continued

Step	Agency	Estimated minimum time to complete
Register in *Grants.gov*	*Grants.gov*	One (1) Week.**

* Applicants are advised that the stated durations are estimates only and represent minimum timeframes. Actual timeframes may take longer. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account, has not yet received a UEI or EIN, and/or fails to properly register in *Grants.gov*.

** This estimate assumes an Applicant has a UEI, an EIN, and is already registered in *SAM.gov*.

F. Submission Dates and Times:

1. Submission Deadlines: The following table provides the critical deadlines for the FY 2024 Funding Round.

TABLE 12—FY 2024 NACA PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Submission method
Last day to create an Awards Management Information Systems (AMIS) Account (all Applicants).	January 5, 2024	11:59 p.m. ET	AMIS.
Last day to enter EIN and UEI in AMIS (all Applicants)	January 5, 2024	11:59 p.m. ET	AMIS.
Last day to submit SF–424 (Application for Federal Assistance).	January 5, 2024	11:59 p.m. ET	Electronically via *Grants.gov*.
Last day to contact Certification, Compliance Monitoring and Evaluation (CCME) Help Desk regarding CDFI Certification Applications for uncertified FA Applicants.	Febuary 2, 2024	11:59 p.m. ET	Service Request via AMIS.
Last day to contact NACA Program staff	February 2, 2024	5 p.m. ET	Service Request via AMIS Or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only).	February 6, 2024	5 p.m. ET	Service Request via AMIS Or 202–653–0422 Or *AMIS@cdfi.treas.gov*.
Last day to submit CDFI Certification Applications for uncertified FA Applicants.	Febuary 6, 2024	11:59 p.m. ET	AMIS.
Last day to submit Title VI Compliance Worksheet (all Applicants) *.	February 6, 2024	11:59 p.m. ET	AMIS.
Last day to submit NACA Program Application for Financial Assistance (FA) or Technical Assistance (TA).	February 6, 2024	11:59 p.m. ET	AMIS.

* This requirement also applies to Applicants' prospective sub-recipients that are not direct beneficiaries of Federal financial assistance (*e.g.,* Depository Institution Holding Companies and their Subsidiary CDFI Insured Depository Institutions).

2. Confirmation of Application Submission in Grants.gov and AMIS: Applicants are required to submit the SF–424, Application for Federal Assistance through the *Grants.gov* system, under the NACA Program Funding Opportunity Number by the applicable deadline. All other Required Application Documents (listed in Table 10) must be submitted through the AMIS website by the applicable deadline. Applicants must submit the SF–424 prior to submitting the Application in AMIS. If the SF–424 is not successfully accepted by *Grants.gov* by the deadline, the CDFI Fund will not review the Application submitted in AMIS, and the Application will be deemed ineligible.

a. Grants.gov Submission Information: Each Applicant will receive an email from *Grants.gov* immediately after submitting the SF–424 confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number for the submitted SF–424. Within 48 hours, the Applicant will receive a second email, which will indicate if the submitted SF–424 was either successfully validated or rejected with errors. However, Applicants should not rely on the email notification from *Grants.gov* to confirm that their SF–424 was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their SF–424 by contacting the helpdesk at *Grants.gov* directly. The Application material submitted in AMIS is not officially accepted by the CDFI Fund until *Grants.gov* has validated the SF–424.

b. AMIS Submission Information: AMIS is a web-based system where Applicants will directly enter their Application information and add the required attachments listed in Table 10. AMIS will verify that the Applicant provided the minimum information required to submit an Application. Applicants are responsible for the quality and accuracy of the information and attachments included in the Application submitted in AMIS. The CDFI Fund strongly encourages Applicants to allow for sufficient time to review and complete all Required Application Documents listed in Table 10, and remedy any issues prior to the Application deadline. Each Application must be signed by an Authorized Representative in AMIS before it can be submitted. Applicants must ensure that the Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only an Authorized Representative or an Application Point of Contact may submit an Application. If an Authorized Representative or Application Point of Contact does not

submit the Application, the Application will be deemed ineligible. Applicants may only submit one Base-FA or TA Application under the NACA Program. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock or allow multiple Application submissions.

3. Late Submission or AMIS Account Creation: The CDFI Fund will not accept an Application if the SF–424 is not submitted and accepted by *Grants.gov* by the SF–424 deadline listed in Table 1 and Table 12. Additionally, the CDFI Fund will not accept an Application if it is not signed by an Authorized Representative and submitted in AMIS by the Application deadline or if an Applicant did not submit the required Title VI Compliance Worksheet by the Application deadline listed in Table 1 and Table 12. The CDFI Fund will also not accept an Application from an Applicant that failed to create an AMIS account by the deadlines specified in Table 1 and Table 12. In these cases, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible.

However, in cases where a federal government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424, the Application, or creating an AMIS account, or precluding an Applicant from submitting the Title VI Compliance Worksheet by the deadlines stated in this NOFA, Applicants are provided the opportunity to submit a written request for acceptance of late submissions. Be aware that unexpected delay in a federal government process does not in and of itself constitute a federal government administrative or technological error. The CDFI Fund will only approve the late submission of the SF–424, the Application, the Title VI Compliance worksheet, or the late creation of an AMIS account if the Applicant demonstrates that an unexpected delay was the direct result of a federal government administrative or technological error.

a. Creation of AMIS Account: In cases where a federal government administrative or technological error directly resulted in precluding an Applicant from creating an AMIS account by the required deadline, the Applicant must submit a written request for approval to create its AMIS account after the deadline, and include documentation of the error, no later than two business days after the AMIS account creation deadline. The CDFI Fund will not respond to requests for creating an AMIS account after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program or an email to *cdfihelp@cdfi.treas.gov* with a subject line of ''AMIS Account Creation Deadline Extension Request.''

b. SF–424 Late Submission: In cases where a federal government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424 by the required deadline, the Applicant must submit a written request for acceptance of the late SF–424 submission and include documentation of the error no later than two business days after the SF–424 deadline. The CDFI Fund will not respond to requests for acceptance of late SF–424 submissions after that time period. Applicants must submit late SF–424 submission requests to the CDFI Fund via an AMIS Service Request to the NACA Program with a subject line of ''Late SF–424 Submission Request.''

c. Title VI Compliance Worksheet Late Submission: In cases where a federal government administrative or technological error directly precluded an Applicant from submitting the Title VI Compliance Worksheet by the required deadline, the Applicant must submit a written request for approval to submit the Worksheet after the deadline, and include documentation of the error, no later than two business days after the Title VI Compliance Worksheet submission deadline. The CDFI Fund will not respond to requests for submitting a Title VI Compliance Worksheet after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program with a subject line of ''CDFI Program—Title VI Compliance Worksheet Deadline Extension Request.''

d. AMIS Application Late Submission: In cases where a federal government administrative or technological error directly resulted in precluding an Applicant from submitting the Application in AMIS by the required deadline, the Applicant must submit a written request for acceptance of the late Application submission and include documentation of the error no later than two business days after the Application deadline. The CDFI Fund will not respond to requests for acceptance of late Application submissions after that time period. Applicants must submit late Application submission requests to the CDFI Fund via an AMIS Service Request to the NACA Program with a subject line of ''Late Application Submission Request.''

G. Funding Restrictions: Base-FA, PPC–FA, DF–FA, HFFI–FA and TA awards are limited by the following:

1. Base-FA Awards:

a. A Recipient shall use Base-FA award funds only for the eligible activities described in Section II. (C)(1) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, Base-FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. Base-FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay Base-FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

2. PPC–FA Awards:

a. A Recipient shall use PPC–FA award funds only for the eligible activities described in Section II. (C)(5) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, PPC–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. PPC–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay PPC–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

3. DF–FA Awards:

a. A Recipient shall use DF–FA award funds only for the eligible activities described in Section II. (C)(2) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, DF–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. DF–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay DF–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

4. HFFI–FA Awards:

a. A Recipient shall use HFFI–FA award funds only for the eligible activities described in Section II. (C)(4) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, HFFI–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. HFFI–FA award funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay HFFI–FA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

5. TA Awards:

a. A Recipient shall use TA award funds only for the eligible activities described in Section II. (C) (3) of this NOFA and its Assistance Agreement.

b. A Sponsoring Entity Recipient must create the Emerging CDFI as a legal entity no later than the end of the first year of the Period of Performance. Upon creation of the Emerging CDFI, the Sponsoring Entity must request the CDFI Fund to amend the Assistance Agreement to add the Emerging CDFI as a co-Recipient. The Sponsoring Entity must add the Emerging CDFI as a co-Recipient within 90 days the end of the first year of the Period of Performance. The Sponsoring Entity must then transfer any remaining balances and/or assets derived from the TA award to the Emerging CDFI.

c. With the exception of Depository Institution Holding Company Applicants, TA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

d. TA award funds shall only be paid to the Recipient.

e. The CDFI Fund, in its sole discretion, may pay TA award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

f. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

V. Application Review Information

A. Criteria: If the Applicant has submitted an eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or risk that its Application will be rejected. The CDFI Fund will review the Base-FA, DF–FA, PPC–FA, HFFI–FA, and TA Applications in accordance with the process below. All internal and external reviewers will complete the CDFI Fund's conflict of interest process. The CDFI Fund's Application conflict of interest policy is located on the CDFI Fund's website.

1. Base-FA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application using a five-step review process illustrated in the sections below. Applicants that meet the minimum criteria will advance to the next step in the review process. Applicants applying as a Community Partnership must describe the partnership in the Application pursuant to the requirements set forth in Table 8, and will be evaluated in accordance with the review process described below.

a. Step 1: Eligibility Review: The CDFI Fund will evaluate each Application to determine its eligibility status pursuant to Section III of this NOFA.

b. Step 2: Financial Analysis and Compliance Risk Evaluation:

i. *Step 2: Financial Analysis:* For Regulated Institutions, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal or State Banking Agency. As detailed in Table 8, each Regulated Institution FA Applicant (including a subsidiary Depository Institution that will expend and carry out the activities of an award on behalf of a Depository Institution Holding Company Applicant) must have a CAMELS/CAMEL rating of at least ''3'' and/or no significant material concerns from its regulator and a CRA assessment rating of at least ''Satisfactory''.

For non-regulated Applicants, the CDFI Fund will evaluate the financial health and viability of each non-regulated Applicant using financial information provided by the Applicant. For the financial analysis, each non-regulated Applicant will receive a Total Financial Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. The Total Financial Composite Score is based on the analysis of twenty-three (23) financial indicators. Applications will be grouped based on the Total Financial Composite Score. Applicants must receive a Total Financial Composite Score of one (1), two (2), or three (3) to advance to Step 3. Applicants that receive an initial Total Financial Composite Score of four (4) or five (5) will be re-evaluated and re-scored by CDFI Fund staff. If the Total Financial Composite Score remains four (4) or five (5) after CDFI Fund staff review, the Applicant will not advance to Step 3.

ii. *Step 2: Compliance Risk Evaluation:* For the compliance analysis, the CDFI Fund will evaluate the compliance risk of each Applicant using information provided in the Application as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to meeting the PG&Ms set forth in the Assistance Agreement. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI Fund staff review, the Applicant will not advance to Step 3.

c. *Step 3: Business Plan Review:* Applicants that proceed to Step 3 will be evaluated on the soundness of their comprehensive business plan. Two external non-CDFI Fund Reviewers will conduct the Step 3: Business Plan Review. Reviewers will evaluate the Application sections listed in Table 13. All Applications will be reviewed in accordance with standard reviewer evaluation materials. At the conclusion of the Step 3 evaluation, Applications will be ranked based on Total Business Plan Scores, in descending order from highest Total Business Plan Score to lowest Total Business Plan Score. An amount up to but not exceeding the highest scoring 70% of NACA FA Applicants in the NACA FA Applicant pool will progress to Step 4. If a tie in Total Business Plan Scores would prevent an Applicant from moving to Step 4, all Applicants with the same score will progress to Step 4. Lastly, the CDFI Fund may consider the geographic diversity of Applicants based on primary geographic market served (Major Urban Area, Micropolitan Area, Minor Urban Area, and Rural Area) when determining the Step 4 Applicant pool.

Based on funding availability for NACA Base-FA Applicants, the CDFI Fund reserves the right to limit the number of Applicants that progress from Step 3 to Step 4 to ensure that the CDFI Program can meaningfully vary award amounts among Applicants with different Step 4 Policy Objective scores, while maintaining minimum award amounts specified in Table 2. In cases where funding availability is not sufficient to progress all Applicants within the top 70% of the NACA FA Applicant pool from Step 3 to Step 4, priority will be given to Applicants that score highest on the Total Business Plan Score.

TABLE 13—STEP 3: BASE-FA BUSINESS PLAN REVIEW SCORING CRITERIA

Base-FA application sections	Possible score	Score needed to advance
Mission and Community Needs	Scored as a component of the other Base-FA Application Sections.	N/A.
Business Strategy	12	N/A.
Market and Competitive Analysis	7	N/A.
Products and Services	12	N/A.
Management and Track Record	12	N/A.
Growth and Projections	7	N/A.
Total Business Plan Score	50	NACA Applicants: Up to but not exceeding top 70% of all NACA Applicants.

d. *Step 4: Policy Objective Review:* The CDFI Fund internal reviewers will evaluate each Application to determine its ability to meet policy objectives of the CDFI Fund. Each Applicant will be evaluated in each of the categories listed in Table 14, and will receive a Total Policy Objective Review Score on a scale of one (1) to five (5), with one (1) being the highest score. Applicants are then grouped according to Total Policy Objective Review Scores.

The CDFI Fund also conducts a due diligence review for Applicants that includes an analysis of programmatic risk factors including, but not limited to: history of performance in managing Federal awards (including timeliness of reporting and compliance); ability to meet FA Objective(s) selected by Base-FA Applicants in their Applications; reports and findings from audits; and ability to effectively implement federal requirements, each of which could impact the Total Policy Objective Review Score.

TABLE 14—STEP 4: BASE-FA POLICY REVIEW SCORING CRITERIA

Section	Possible scores	High score	Score needed to advance
Economic Distress	1, 2, 3, 4, or 5	1	N/A.
Economic Opportunities	1, 2, 3, 4, or 5	1	N/A.
Community Collaboration	1, 2, 3, 4, or 5	1	N/A.
Total Policy Objective Review Composite Score	1, 2, 3, 4, or 5	1	All Scores Advance.

e. *Step 5: Award Amount Determination:* The CDFI Fund determines an award amount for each Application based on the Step 4 Total Policy Objective Review Score, the Applicant's request amount, and on certain other factors, including, but not limited to, the Applicant's deployment track record, minimum award size, and funding availability. Applicants may have award amounts reduced from the requested award amount or not funded as a result of this analysis. Based on funding availability for NACA Base-FA, the CDFI Fund reserves the right to not award all Applicants that advance to Step 5. In cases where funding availability is not sufficient to award all Applications, priority will be given to Applicants that score highest on the Step 4 Policy Objective Review: For NACA FA Applicants, the award cannot exceed 100% of the Applicant's total portfolio outstanding as of the Applicant's most recent historic fiscal year end,[9] or the minimum award size

[9] For the purposes of this NOFA, an Applicant's most recent historic fiscal year end is determined as follows:

(A) Applicants with a 3/31 fiscal year end date will treat FY 2023 as their most recent historic fiscal year and FY 2024 as their current year.

(B) Applicants with a 6/30 fiscal year end date and a completed FY 2023 audit will treat FY 2023 as their most recent historic fiscal year and FY 2024 as their current year.

Continued

as noted in Table 2, whichever is greater.

2. HFFI–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each HFFI–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application sections listed in Table 15 and assign a Total HFFI- FA Score up to 60 points. The CDFI Fund will make awards to the highest scoring Applicants first. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base-FA award will not be considered for a HFFI–FA award.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an HFFI–FA award. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund may reduce awards sizes from requested amounts based on certain variables, including but not limited to, an Applicant's loan disbursement activity, total portfolio outstanding, or compliance with prior HFFI–FA awards. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

TABLE 15—STEP 4 HFFI–FA APPLICATION SCORING CRITERIA

Sections	Possible score (points)
Target Market Profile	10
Healthy Food Financial Products	10
Projected HFFI–FA Activities	15
HFFI Track Record	20
Management Capacity for Providing Healthy Food Financing	5
Total HFFI- FA Score	60

3. PPC–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate the PPC–FA request of each PPC–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. PPC–FA requests are not scored. PPC–FA award amounts will be determined based on the total number of eligible Applicants and funding availability, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's overall portfolio size, historical track record of deployment in PPC, pipeline of projects in PPC, minimum award size, and funding availability. Applicants that fail to receive a Base-FA award will not be considered for a PPC–FA award.

4. DF–FA Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each DF–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application and assign a Total DF–FA Score on a scale of one (1) to three (3), with one (1) being the highest score. Applicants are then grouped according to Total DF–FA Score. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base-FA award will not be considered for a DF–FA award. Award amounts will be determined on the basis of the Total DF–FA Score, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's deployment track record, minimum award size, and funding availability. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund will make awards to the highest scoring Applicants first.

TABLE 16—STEP 3 DF–FA APPLICATION SCORING CRITERIA

Section	Possible scores	High score
DF–FA Narrative Questions	1, 2, or 3	1
Total DF–FA Score	1, 2, or 3	1

5. TA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application to determine its eligibility pursuant to Section III of this NOFA. If the Application satisfies the eligibility criteria, the CDFI Fund will conduct the TA Business Plan Review in two parts. Sponsoring Entity or Emerging CDFI Applicants must receive a rating of Low Risk or Medium Risk in Part I of the TA Business Plan Review to progress to Part II of the TA Business Plan Review. Sponsoring Entity, or Emerging CDFI Applicants that receive a rating of High Risk in Part I of the TA Business Plan Review will not be considered for an award. Part I of the TA Business Plan Review is not applicable for Certified CDFI Applicants. Sponsoring Entity, Emerging CDFI, and Certified CDFI Applicants must receive a rating of Low Risk or Medium Risk in Part II of the TA Business Plan Review to be considered for an award. Applicants that receive a rating of High Risk in Part II of the TA Business Plan Review will not be considered for an award.

An Applicant that is a Certified CDFI will be evaluated on the demonstrated need for a TA award to build the CDFI's capacity, further the Applicant's strategic goals, and achieve impact

(C) Applicants with a 6/30 fiscal year end date but without a completed FY 2023 audit will treat FY 2022 as their most recent historic fiscal year and FY 2023 as their current year.

(D) Applicants with a 9/30 fiscal year end date will treat FY 2022 as their most recent historic fiscal year and FY 2023 as their current year.

(E) Applicants with a 12/31 fiscal year end date will treat FY 2022 as their most recent historic fiscal year and FY 2023 as their current year.

within the Applicant's Target Market. An Applicant that is an Emerging CDFI will be evaluated on the Applicant's demonstrated capability and plan to achieve CDFI CDFI Certification within three years, or if a prior Recipient, the CDFI Certification PG&M stated in its prior Assistance Agreement. An Applicant that is an Emerging CDFI will also be evaluated on its demonstrated need for a TA award to build the CDFI's capacity and further its strategic goals. An Applicant that is a Sponsoring Entity will be rated on its demonstrated capability to create a separate legal entity within one year that will achieve CDFI Certification within four years. An Applicant that is a Sponsoring Entity will also be rated on its demonstrated need for a TA award to build the CDFI's capacity and further its strategic goals. The CDFI Fund will rate each part of the TA Business Plan Review as indicated in Table 17.

TABLE 17—TA BUSINESS PLAN REVIEW

Business plan review component	Applicant type	Ratings
Part I:		
Primary Mission	Sponsoring Entity and Emerging CDFI Applicants	Low Risk, Medium Risk, or High Risk.
Financing Entity	Sponsoring Entity and Emerging CDFI Applicants.	
Target Market	Sponsoring Entity and Emerging CDFI Applicants.	
Accountability	Sponsoring Entity and Emerging CDFI Applicants.	
Development Services	Sponsoring Entity and Emerging CDFI Applicants.	
Part II:		
Target Market Needs & Strategy	Sponsoring Entity, Emerging CDFI, and Certified CDFI Applicants.	Low Risk, Medium Risk, or High Risk.
Organizational Capacity	Sponsoring Entity, Emerging CDFI, and Certified CDFI Applicants.	
Management Capacity	Sponsoring Entity, Emerging CDFI, and Certified CDFI Applicants.	

Each TA Application will be evaluated by one internal CDFI Fund reviewer. The Business Plan Reivew of all Applications will be reviewed in accordance with CDFI Fund standard reviewer evaluation materials.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an award. This due diligence includes an analysis of programmatic and financial risk factors including, but not limited to, financial stability, history of performance in managing Federal awards (including timeliness of reporting and compliance), reports and findings from audits, and the Applicant's ability to effectively implement federal requirements. The CDFI Fund will also evaluate the compliance risk of each Applicant using information provided in the Application as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to meeting the PG&Ms set forth in the Assistance Agreement. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI staff review, the Applicant will not be considered for an award. The CDFI Fund will also evaluate the Applicant's ability to meet CDFI Certification criteria of being a legal entity and a non-government entity. Award amounts may be reduced as a result of the due diligence analysis in addition to consideration of the Applicant's funding request and similar factors. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

6. Regulated Institutions: The CDFI Fund will consider safety and soundness information from the Appropriate Federal or State Banking Agency. If the Applicant is a CDFI Depository Institution Holding Company, the CDFI Fund will consider information provided by the Appropriate Federal or State Banking Agencies about both the CDFI Depository Institution Holding Company and the Certified CDFI Subsidiary Insured Depository Institution that will expend and carry out the award. If the Appropriate Federal or State Banking Agency identifies safety and soundness concerns (including any concerns for Subsidiary Depository Institutions carrying out the activities of an award on behalf of a CDFI Depository Institution Holding Company), the CDFI Fund will assess whether such concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested.

7. Non-Regulated Institutions: The CDFI Fund must ensure, to the maximum extent practicable, that Recipients which are non-regulated CDFIs are financially and managerially sound, and maintain appropriate internal controls (12 U.S.C. 4707(f)(1)(A) and 12 CFR 1805.800(b)). Further, the CDFI Fund must determine that an Applicant's capacity to operate as a CDFI and its continued viability will not be dependent upon assistance from the CDFI Fund (12 U.S.C. 4704(b)(2)(A)). If it is determined that the Applicant is incapable of meeting these requirements, the CDFI Fund reserves the right to deem the Applicant ineligible or terminate the award.

B. Anticipated Award Announcement: The CDFI Fund anticipates making the NACA Program award announcement before September 30, 2024. However, the anticipated award announcement date is subject to change without notice.

C. Application Rejection: The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that: adversely affects an Applicant's eligibility for an award; adversely affects the Recipient's CDFI Certification (to the extent that the award is conditional upon CDFI Certification); adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information about the changes through its website. The CDFI Fund's award decisions are

final, and there is no right to appeal decisions.

D. External Non-CDFI Fund Reviewers: All external non-CDFI Fund reviewers are selected based on criteria that includes a professional background in community and economic development finance, and experience reviewing the financial statements of all CDFI institution types. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund. The CDFI Fund's Application reader conflict of interest policy is located on the CDFI Fund's website.

VI. Federal Award Administration Information

A. Award Notification: Each successful Applicant will receive an email ''notice of award'' notification from the CDFI Fund stating that its Application has been approved for an award. Each Applicant not selected for an award will receive an email stating that a debriefing notice has been provided in its AMIS account.

B. Assistance Agreement: Each Applicant selected to receive an award must enter into an Assistance Agreement with the CDFI Fund in order to receive a payment(s). The Assistance Agreement will set forth the award's terms and conditions, including but not be limited to the: (i) award amount; (ii) award type; (iii) award uses; (iv) eligible use of award funds; (v) PG&Ms; and (vi) reporting requirements. FA Assistance Agreements have three-year Periods of Performance. TA Assistance Agreements have two-year Periods of Performance for Certified CDFIs, three-year Periods of Performance for Emerging CDFIs, and four-year Periods of Performance for Sponsoring Entity Recipients. Upon creation of the Emerging CDFI, the Sponsoring Entity must request the CDFI Fund to amend the Assistance Agreement and add the Emerging CDFI as a party thereto. The Emerging CDFI, as co-Recipient, will be subject to all of the terms and conditions of the Assistance Agreement, including all PG&Ms.

1. Certificate of Good Standing: All FA and TA Recipients that are not Regulated Institutions will be required to provide the CDFI Fund with a certificate of good standing from the secretary of state for the Recipient's jurisdiction of formation prior to closing. This certificate can often be acquired online on the secretary of state website for the Recipient's jurisdiction of formation and must generally be dated within 180 days prior to the Federal Award Date of the Assistance Agreement. Due to potential backlogs in state government offices, Applicants are advised to submit requests for certificates of good standing no later than 60 days after they submit their Applications.

2. Closing: Pursuant to the Assistance Agreement, there will be an initial closing at which point the Assistance Agreement and related documents will be properly executed and delivered, and an initial payment of FA or TA may be made. The first payment is the estimated amount of the award that the Recipient states in its Application that it will use for eligible FA or TA activities in the first 12 months after the award announcement. The first payment request amount entered in the Application must be greater than zero. The CDFI Fund reserves the right to increase the first payment amount on any award to ensure that any subsequent payments are at least $25,000 for FA and $5,000 for TA awards.

The CDFI Fund will minimize the time between the Recipient incurring costs for eligible activities and award payment(s) in accordance with the Uniform Requirements. Advanced payments for eligible activities will occur no more than one year in advance of the Recipient incurring costs for the eligible activities. Following the initial closing, there may be subsequent closings involving additional award payments. Any documentation in addition to the Assistance Agreement that is connected with such subsequent closings and payments shall be properly executed and timely delivered by the Recipient to the CDFI Fund.

3. Requirements Prior to Entering into an Assistance Agreement: If, prior to entering into an Assistance Agreement, information (including administrative errors) comes to the CDFI Fund's attention that: adversely affects the Recipient's eligibility for an award; adversely affects the Recipient's CDFI Certification (to the extent that the award is conditional upon CDFI Certification); adversely affects the CDFI Fund's evaluation of the Application; indicates that the Recipient is not in compliance with any requirement listed in the Uniform Requirements; indicates that the Recipient is not in compliance with a term or condition of any prior Award Agreement, Assistance Agreement, and/or Allocation Agreement from the CDFI Fund; indicates the Recipient has failed to execute and return a prior round Assistance Agreement to the CDFI Fund within the CDFI Fund's deadlines; or indicates fraud or mismanagement on the Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the award or take such other actions as it deems appropriate. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to return the Assistance Agreement, signed by the Authorized Representative of the Recipient, and/or provide the CDFI Fund with any requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA pending the criteria described in Table 18.

TABLE 18—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT

Requirement	Criteria
Failure to meet reporting requirements.	• If a Recipient received a prior award or allocation under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, as of the date of the notice of award, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a payment of award, until said prior Recipient or allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. • If such a prior Recipient or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the award made under this NOFA. • Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete, nor that it met reporting requirements.

TABLE 18—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT—Continued

Requirement	Criteria
Failure to maintain CDFI Certification.	• An FA Recipient must be a Certified CDFI prior to the award announcement date. • If an FA Recipient fails to maintain CDFI Certification, the CDFI Fund will not execute the Assistance Agreement and will terminate and rescind the award made under this NOFA • If a TA Recipient is a Certified CDFI at the time of award announcement, it must maintain CDFI Certification. • If a Certified CDFI TA Recipient fails to maintain CDFI Certification, the CDFI Fund will not execute the Assistance Agreement and will terminate and rescind the award made under this NOFA
Pending resolution of noncompliance.	• The CDFI Fund will delay entering into an Assistance Agreement with a prior Recipient or allocatee that has pending noncompliance or default issues with any of its previously executed CDFI Fund award(s), allocation(s), bond loan agreement(s), or agreement(s) to guarantee. • If said prior Recipient or allocatee is unable satisfactorily resolve the compliance issues, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the award made under this NOFA.
Noncompliance or default status	• If, at any time prior to entering into an Assistance Agreement, the CDFI Fund determines that a Recipient is noncompliant or found in default with any previously executed CDFI Fund award(s), allocation(s), bond loan agreement(s), or agreement(s) to guarantee, and the CDFI Fund has provided written notification that the Recipient is ineligible to apply for or receive any future awards or allocations for a time period specified by the CDFI Fund in writing, the CDFI Fund may delay entering into an Assistance Agreement until the Recipient has cured the noncompliance and/or default by taking actions the CDFI Fund has specified within such specified timeframe. If the Recipient is unable to cure the noncompliance and/or default within the specified timeframe, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Compliance with federal civil rights requirements.	• If, within the period starting three years prior to this NOFA and through the date of the Assistance Agreement, the Recipient received a final determination, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient violated any federal civil rights laws or regulations, including: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. The CDFI Fund will delay entering into an Assistance Agreement with a Recipient that has pending Title VI noncompliance issues, if the CDFI Fund has not yet made a final compliance determination. • If the Recipient is unable to satisfactorily resolve the Title VI noncompliance issues, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. • The Title VI Compliance Worksheet and program award terms and conditions do not impose anti-discrimination requirements on Tribal governments beyond what would otherwise apply under federal law.
Do Not Pay	• The Do Not Pay Business Center was developed to support federal agencies in their efforts to reduce the number of improper payments made through programs funded by the federal government. • The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient (or Affiliate of a Recipient) is determined to be ineligible based on data in the Do Not Pay database.
Safety and soundness	• If it is determined the Recipient is, or will be, incapable of meeting its award obligations, the CDFI Fund will deem the Recipient to be ineligible or require it to improve its safety and soundness prior to entering into an Assistance Agreement.

C. Reporting:

1. Reporting requirements: On an annual basis during the Period of Performance, the CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the following components (Annual Reporting Requirements):

TABLE 19—ANNUAL REPORTING REQUIREMENTS *

Financial Statement Audit Report (Non-profit Recipient including Insured Credit Unions and State-Insured Credit Unions).	A Non-profit Recipient (including Insured Credit Unions and State-Insured Credit Unions) must submit a Financial Statement Audit (FSA) Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. Under no circumstances should this be construed as the CDFI Fund requiring the Recipient to conduct or arrange for additional audits not otherwise required under Uniform Requirements or otherwise prepared at the request of the Recipient or parties other than the CDFI Fund.
Financial Statement Audit Report (For-Profit Recipient).	For-profit Recipients must submit an FSA Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant.
Financial Statement Audit Report (Depository Institution Holding Company and Insured Depository Institution).	If the Recipient is a Depository Institution Holding Company or an Insured Depository Institution, it must submit an FSA Report in AMIS.
Financial Statement Audit Report (Sponsoring Entities).	A Sponsoring Entity must submit an FSA Report in AMIS, along with a statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. Under no circumstances should this be construed as the CDFI Fund requiring the Sponsoring Entity to conduct or arrange for additional audits not otherwise required under Uniform Requirements or otherwise prepared at the request of the Sponsoring Entity or parties other than the CDFI Fund.

TABLE 19—ANNUAL REPORTING REQUIREMENTS *—Continued

Single Audit Report (Non-Profit Recipients, if applicable).	A non-profit Recipient must complete an annual Single Audit pursuant to the Uniform Requirements (see 2 CFR Subpart F-Audit Requirements) if it expends $750,000 or more in Federal awards in its fiscal year, or such other dollar threshold established by OMB pursuant to 2 CFR 200.501. If a Single Audit is required, it must be submitted electronically to the Federal Audit Clearinghouse (FAC) (see 2 CFR Subpart F-Audit Requirements in the Uniform Requirements) and optionally through AMIS.
Federal Financial Report/OMB Standard Form 425 (SF 425).	The Recipient must annually submit the SF–425 Federal Financial Report to the CDFI Fund through AMIS to disclose how much of the CDFI Program award funds were expended during the federal government's fiscal year of October 1 through September 30.
Transaction Level Report (TLR)	The Recipient must submit a TLR to the CDFI Fund through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a TLR. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a TLR. The TLR is not required for TA Recipients.
Uses of Award Report	The Recipient must submit the Uses of Award Report to the CDFI Fund in AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Uses of Award Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a Uses of Award Report.
Performance Progress Report	The Recipient must submit the Performance Progress Report through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Performance Progress Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a Performance Progress Report.
Annual Certification and Data Collection Report (ACR).	TA Recipients that are Certified at the time of award announcement and all FA Recipients must submit the ACR to the CDFI Fund through AMIS. If a TA Recipient is an uncertified CDFI at the time of award announcement, it must submit the ACR to the CDFI Fund through AMIS subsequent to obtaining CDFI Certification, as per the ACR reporting schedule.

* Personally Identifiable Information (PII) is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of individual borrowers/residents of Distressed Communities in AMIS, Applicants should not include the following PII for the individuals who received the Financial Products or Financial Services in AMIS or in the supporting documentation (*i.e.,* name of the individual, Social Security Number, driver's license or state identification number, passport number, Alien Registration Number, etc.). This information should be redacted from all supporting documentation.

Each Recipient is responsible for the timely and complete submission of the Annual Reporting Requirements. Sponsoring Entities with co-Recipients will be informed of any changes to reporting obligations at the time the Emerging CDFI is joined to the Assistance Agreement. The CDFI Fund reserves the right to contact the Recipient and additional entities or signatories to the Assistance Agreement to request additional information and/or documentation. The CDFI Fund will use such information to monitor each Recipient's compliance with the requirements of the Assistance Agreement and to assess the impact of the NACA Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements, including increasing the scope and frequency of reporting, if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Recipients.

2. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with federal statutes, regulations, and the terms and conditions of the Federal award. These systems must be sufficient to permit the preparation of reports required by the CDFI Fund to ensure compliance with the terms and conditions of the NACA Program, including the tracing of award funds to a level of expenditures adequate to establish that such award funds have been used in accordance with federal statutes, regulations, and the terms and conditions of the Federal award.

The cost principles used by Recipients must be consistent with federal cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the NACA Program award. In addition, the CDFI Fund will require Recipients to: maintain effective internal controls; comply with applicable statutes, regulations, and the Assistance Agreement; evaluate and monitor compliance; take appropriate action when not in compliance; and safeguard personally identifiable information.

VII. Agency Contacts

A. The CDFI Fund will respond to questions concerning this NOFA and the Application between the hours of 9 a.m. and 5 p.m. Eastern Time, starting on the date that the NOFA is published through the date listed in Table 1 and Table 12. The CDFI Fund strongly recommends Applicants submit questions to the CDFI Fund via an AMIS Service Request to the NACA Program, Certification, Compliance Monitoring and Evaluation (CCME), or IT Help Desk. The CDFI Fund will post on its website responses to reoccurring questions received about the NOFA and Application. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.* Table 20 lists CDFI Fund contact information:

TABLE 20—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
NACA Program	Service Request via AMIS	202–653–0421, option 1.	*cdfihelp@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
CDFI Certification	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*

TABLE 20—CONTACT INFORMATION—Continued

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
AMIS—IT Help Desk	Service Request via AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*

B. Information Technology Support: For IT assistance, the preferred method of contact is to submit a Service Request within AMIS. For the Service Request, select ''Technical Issues'' from the Program dropdown menu of the Service Request. People who have visual or mobility impairments that prevent them from using the CDFI Fund's website should call (202) 653–0422 for assistance (this is not a toll free number).

C. Communication with the CDFI Fund: The CDFI Fund will use the contact information in AMIS to communicate with Applicants and Recipients. It is imperative, therefore, that Applicants, Recipients, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information such as contact names (especially for the Authorized Representative), email addresses, fax and phone numbers, and office locations.

D. Civil Rights and Equal Employment Opportunity: Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Equal Employment Opportunity enforces various federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of because of race, color, religion, national origin, age, sex, marital status, familial status, disability and/or reprisal, s/he may file a complaint with: Director, Office of Civil Rights and Equal Employment Opportunity, 1500 Pennsylvania Ave, NW, Washington, DC 20230 or (202) 622–1160 (not a toll-free number).

E. Statutory and National Policy Requirements: The CDFI Fund will manage and administer the Federal award in a manner to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, federal law, and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

VIII. Other Information

A. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. If applicable, the CDFI Fund may inform Applicants that they do not need to provide certain Application information otherwise required. Pursuant to the Paperwork Reduction Act, the CDFI Program, and NACA Program Application has been assigned the following control number: 1559–0021 inclusive of PPC–FA, DF–FA, and HFFI–FA.

B. Application Information Sessions: The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, visit the CDFI Fund's website at *http://www.cdfifund.gov*.

Authority: 12 U.S.C. 4701, *et seq.;* 12 CFR parts 1805 and 1815; 2 CFR part 200.

Marcia Sigal,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–27139 Filed 12–8–23; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC'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: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Enforcement, Compliance and Analysis, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action[s]

On December 5, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. DE GEETERE, Tom (a.k.a. DE GEETERE, Tom Maria; a.k.a. DE GEETERE, Tom Maria Leonza Edward), Belgium; DOB 26 Feb 1964; nationality Belgium; Gender Male; Passport EH641188 (Belgium) expires 23 Aug 2014 (individual) [RUSSIA–EO14024] (Linked To: EUROPEAN TECHNICAL TRADING).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024), for being or having been a leader, official, senior executive officer, or member of the board of directors of EUROPEAN TECHNICAL TRADING, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. DE GEETERE, Hans (a.k.a. DE GEETERE, Hans Maria Christiane Herve; a.k.a. ''DE GEETERE, Hmch''; a.k.a. ''Dick Boss''), Paul Parmentierlaan 121, Knokke Heist 8300, Belgium; Nyckeesstraat 4, Knokke Heist 8300,

Belgium; DOB 20 Jun 1962; POB Deinze, Belgium; nationality Belgium; Gender Male; Passport EN985009 (Belgium) expires 26 Jul 2023; National ID No. 592945001464 (Belgium) (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

3. KULEMEKOV, Vladimir (a.k.a. KULEMEKOV, Vladimir Janovich), 64–1–215 Choroshevskoye Shosse, Moscow 123007, Russia; 9 2nd Verkhny Mikhailovsky Proezd, Building 2, Moscow 115007, Russia; DOB 26 Mar 1946; nationality Russia; Gender Male (individual) [RUSSIA–EO14024] (Linked To: DE GEETERE, Hans).

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, DE GEETERE, Hans, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. SKVORTSOV, Sergey (a.k.a. SKVORTSOV, Sergei Nikolaevich), Nacka, Sweden; DOB 28 Jul 1963; POB Perm, Russia; nationality Sweden; alt. nationality Russia; Gender Male; Passport 85338519 (Sweden) expires 30 Oct 2017 (individual) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

5. BEUN, Kimberley Catriona Lucinda, Eeklo, Belgium; DOB 21 May 1988; POB Oostburg, Netherlands; nationality Netherlands; Gender Female; Passport NUBF7PLH1 (Netherlands) expires 31 Oct 2024 (individual) [RUSSIA–EO14024] (Linked To: ERINER LIMITED).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, ERINER LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Entities

1. HASA NEDERLAND B.V., Nieuwstraat 56 F, Sluis 4524 EG, Netherlands; 73/B Burgemeester Bosstraat, Rotterdam 3043 GC, Netherlands; Belgium; Target Type Private Company; Branch Unit Number 000009753184 (Netherlands); Enterprise Number 0877031240 (Belgium); Registration Number 32065154 (Netherlands) [RUSSIA–EO14024] (Linked To: THE MOTHER ARK LTD).

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, THE MOTHER ARK LTD, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. AHETEI LIMITED, Orthodoxou Tower, Floor 3, 44 Inomenon Ethnon, Larnaca 6042, Cyprus; Organization Established Date 28 Jan 2022; Target Type Private Company; Registration Number HE430579 (Cyprus) [RUSSIA–EO14024] (Linked To: LAR VORTO SERVICES 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, LAR VORTO SERVICES LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. ERINER LIMITED, Orthodoxou Tower, Floor 3, 44 Inomenon Ethnon, Larnaca 6042, Cyprus; Kingsfordweg 321, 1043 GR Limassol, Cyprus; Organization Established Date 28 Jun 2021; Target Type Private Company; Business Registration Number HE423113 (Cyprus) [RUSSIA–EO14024] (Linked To: DE GEETERE, Hans).

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, DE GEETERE, Hans, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. EUROPEAN TECHNICAL TRADING (a.k.a. ETT DISTRIBUTION BV; a.k.a. EUROPEAN TT DISTRIBUTION; a.k.a. ''ETT''), 24, Booiebos, Gent 9031, Belgium; 1, Ijsbeerlaan, Nevele 9850, Belgium; Target Type Private Company; Enterprise Number 0677.702.574 (Belgium) [RUSSIA–EO14024] (Linked To: DE GEETERE, Hans).

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, DE GEETERE, Hans, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. EUROPEAN TRADING TECHNOLOGY B.V., Nieuwstraat 56F, 4524 EG Sluis, Netherlands; Organization Established Date 04 Nov 2016; Target Type Private Company; Registration Number 67226205 (Netherlands) [RUSSIA–EO14024] (Linked To: DE GEETERE, Hans).

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, DE GEETERE, Hans, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. KNOKKE HEIST SUPPORT CORPORATION MANAGEMENT, Paul Parmentierlaan 121, Knokke-Heist 8300, Belgium; Nyckeesstraat 4, Knokke-Heist 8300, Belgium; Organization Established Date 13 Nov 2019; Target Type Private Company; Branch Unit Number 2299715293 (Belgium); Registration Number 0737640854 (Belgium) [RUSSIA–EO14024] (Linked To: DE GEETERE, Hans).

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, DE GEETERE, Hans, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. LAR VORTO SERVICES LIMITED, Orthodoxou Tower, Floor 3, 44 Inomenon Ethnon, Larnaca 6042, Cyprus; Organization Established Date 10 Nov 2015; Target Type Private Company; Business Registration Number HE348790 (Cyprus) [RUSSIA–EO14024] (Linked To: ERINER LIMITED).

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, ERINER LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. M AND S TRADING (a.k.a. M AND S TRADING HK), Room 14F A, Success Industrial Building, No. 17 Sheung Hei St, San Po Kong, Kowloon, Hong Kong, China; Target Type Private Company; Registration Number 51875901000 (Hong Kong) [RUSSIA–EO14024] (Linked To: DE GEETERE, Hans).

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, DE GEETERE, Hans, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. THE MOTHER ARK LTD, Orthodoxou Tower, Floor 3, 44 Inomenon Ethnon, Larnaca 6042, Cyprus; Organization Established Date 13 Apr 2022; Target Type Private

Company; Registration Number HE433232 (Cyprus) [RUSSIA–EO14024] (Linked To: DE GEETERE, Hans).

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, DE GEETERE, Hans, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Dated: December 5, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–27049 Filed 12–8–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0500]

Agency Information Collection Activity Under OMB Review: Mandatory Verification of Dependents

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0500.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0500'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 501, 38 CFR 3.652.

Title: Mandatory Verification of Dependents (VA Form 21–0538).

OMB Control Number: 2900–0500.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0538 is primarily used to request verification of the status of dependents for whom additional compensation is being paid to veterans.

No substantive changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 69683–69684 on October 6, 2023.

Affected Public: Individuals or households.

Estimated Annual Burden: 20,541.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 123,246.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–27052 Filed 12–8–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Agency Information Collection Activity Under OMB Review: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0110.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0110'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3713(a) and 3714 and 3702(b)(2).

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan.

OMB Control Number: 2900–0110.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–6381 is completed by Veterans who are selling their homes by assumption rather than requiring purchasers to obtain their own financing to pay off the loan. The data furnished on the form is essential to determinations for assumption approval, release of liability, and substitution of entitlement in accordance with 38 U.S.C. 3713(a) and 3714 and 3702(b)(2).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at insert citation date: *88* FR 69289 on October 5, 2023, pages 69289.

Affected Public: Individuals or Households.

Estimated Annual Burden: 167 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,000 per year.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–27089 Filed 12–8–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,

No. 236 December 11, 2023

Part II

The President

Executive Order 14112—Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination

Federal Register
Vol. 88, No. 236
Monday, December 11, 2023

Presidential Documents

Title 3—

The President

Executive Order 14112 of December 6, 2023

Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* My Administration is committed to protecting and supporting Tribal sovereignty and self-determination, and to honoring our trust and treaty obligations to Tribal Nations. We recognize the right of Tribal Nations to self-determination, and that Federal support for Tribal self-determination has been the most effective policy for the economic growth of Tribal Nations and the economic well-being of Tribal citizens. Federal policies of past eras, including termination, relocation, and assimilation, collectively represented attacks on Tribal sovereignty and did lasting damage to Tribal communities, Tribal economies, and the institutions of Tribal governance. By contrast, the self-determination policies of the last 50 years—whereby the Federal Government has worked with Tribal Nations to promote and support Tribal self-governance and the growth of Tribal institutions—have revitalized Tribal economies, rebuilt Tribal governments, and begun to heal the relationship between Tribal Nations and the United States.

Despite the progress of the last 50 years, Federal funding and support programs that are the backbone of Federal support for Tribal self-determination are too often administered in ways that leave Tribal Nations unduly burdened and frustrated with bureaucratic processes. The Federal funding that Tribal Nations rely on comes from myriad sources across the Federal Government, often with varying and complex application and reporting processes. While Tribal Nations continue to rebuild, grow, and thrive, some Tribal Nations do not have the capacity and resources they need to access Federal funds—and even for those that do, having to repeatedly navigate Federal processes often unnecessarily drains those resources.

My Administration has taken steps to meaningfully reform existing Federal processes for Tribal Nations. Executive Order 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government), directed executive departments and agencies (agencies) to reduce administrative burdens and improve efficiency in public-facing and internal Federal processes, while the Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation-to-Nation Relationships), and the Presidential Memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation), reiterated our commitment to, and established uniform standards for, Tribal consultation. These previous actions have laid an important foundation for the policies and procedures set forth in this order.

Now is the time to build upon this foundation by ushering in the next era of self-determination policies and our unique Nation-to-Nation relationships, during which we will better acknowledge and engage with Tribal Nations as respected and vital self-governing sovereigns. As we continue to support Tribal Nations, we must respect their sovereignty by better ensuring that they are able to make their own decisions about where and how to meet the needs of their communities. No less than for any other sovereign, Tribal self-governance is about the fundamental right of a people to determine their own destiny and to prosper and flourish on their own terms.

This order solidifies my Administration's commitment to this next era of Tribal self-determination policies that are rooted in prioritizing partnerships with Tribal leaders, respect for Tribal sovereignty, trust in Tribal priorities, and dignity for Tribal Nations. In keeping with our trust and treaty obligations to Tribal Nations, and our commitment to advancing Tribal sovereignty, it is the policy of the United States to design and administer Federal funding and support programs for Tribal Nations, consistent with applicable law and to the extent practicable, in a manner that better recognizes and supports Tribal sovereignty and self-determination. To realize this policy, the Federal Government must improve how it approaches the work of administering Tribal programs and supporting Tribal communities.

We must ensure that Federal programs, to the maximum extent possible and practicable under Federal law, provide Tribal Nations with the flexibility to improve economic growth, address the specific needs of their communities, and realize their vision for their future. We must improve our Nation-to-Nation relationships by reducing administrative burdens and by administering funding in a manner that provides Tribal Nations with the greatest possible autonomy to address the specific needs of their people. We must make it easier for Tribal Nations to access the Federal funding and resources for which they are eligible and that they need to help grow their economies and provide their citizens with vital and innovative services. We must promote partnerships with Tribal Nations, recognizing that they bring invaluable expertise on countless matters from how to more effectively meet the needs of their citizens to how to steward their ancestral homelands. We must promote effective consideration of the unique needs of Tribal Nations from the very beginning of our design, update, or review of processes and throughout every step of administering Federal funding and support programs. We must implement laws, policies, and programs in ways that allow Tribal Nations to take ownership of resources and services for their communities. We need to identify any statutory and regulatory changes that are necessary or may be helpful to ensure that Federal funding and support programs effectively address the needs of Tribal Nations, and recommend legislative changes, where appropriate. Finally, we must, through Tribal consultation, continually improve our understanding of the funding and programmatic needs of Tribal Nations. The foregoing is not only good policy, but is also consistent with our commitment to fulfilling the United States' unique trust responsibility to Tribal Nations and the deep respect we have for Tribal Nations.

Sec. 2. *Definitions.* For purposes of this order:

(a) The term ''agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) The term ''Federal funding and support programs for Tribal Nations'' includes funding, programs, technical assistance, loans, grants, or other financial support or direct services that the Federal Government provides to Tribal Nations or Indians because of their status as Indians. It also includes actions or programs that do not exclusively serve Tribes, but for which Tribal Nations are eligible along with non-Tribal entities. It does not include programs for which both Indians and non-Indians are eligible.

(c) The terms ''Tribes'' and ''Tribal Nations'' mean any Indian tribe, band, nation, or other organized group or community considered an ''Indian Tribe'' under section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5304.

Sec. 3. *Agency Coordination on Better Supporting Tribal Nations and Identifying Opportunities for Reform.* Agencies shall work with the White House Council on Native American Affairs (WHCNAA) to coordinate implementation of this order, share leading practices, and identify potential opportunities for Federal policy reforms that would promote accessible, equitable, and flexible administration of Federal funding and support programs for Tribal

Nations. The WHCNAA shall assist agencies in coordinating the Tribal consultations required by section 4 of this order to minimize the burden on Tribal Nations in participating.

Sec. 4. *Embracing Our Trust Responsibilities by Assessing Unmet Federal Obligations to Support Tribal Nations.* The Director of the Office of Management and Budget (OMB) and the Assistant to the President and Domestic Policy Advisor (Domestic Policy Advisor) shall lead an effort, in collaboration with WHCNAA, to identify chronic shortfalls in Federal funding and support programs for Tribal Nations, and shall submit recommendations to the President describing the additional funding and programming necessary to better live up to the Federal Government's trust responsibilities and help address the needs of all Tribal Nations, as follows:

(a) Within 240 days of the date of this order, the Director of OMB and the Domestic Policy Advisor shall, in consultation with the head of each agency that is a member of WHCNAA, and in consultation with Tribal leaders or their designees, develop guidance for assessing the additional funding each agency needs for its existing Federal funding and support programs for Tribal Nations to better live up to the Federal Government's trust responsibilities and help address the needs of all Tribal Nations.

(b) Within 540 days of the date of this order, the head of each agency that is a member of WHCNAA shall consult the guidance developed under subsection (a) of this section and submit a report to the Director of OMB and the Domestic Policy Advisor that identifies the funding needed for each agency's existing Federal funding and support programs for Tribal Nations to better live up to the Federal Government's trust responsibilities and help address the needs of Tribal Nations in the agency's areas of responsibility.

(c) The Director of OMB and the Domestic Policy Advisor shall develop, based on the agency reports provided under subsection (b) of this section and in consultation with Tribes and WHCNAA, recommendations for the Federal Government to take steps toward better living up to its trust responsibilities and helping address the needs of all Tribal Nations. These recommendations should identify any budgetary, statutory, regulatory, or other changes that may be necessary to ensure that Federal laws, policies, practices, and programs support Tribal Nations more effectively. These recommendations shall be submitted to the President, and shall be considered by agencies and OMB in developing the President's Budget beginning with the next regular President's Budget development cycle.

(d) After submission of the reports and recommendations described in subsections (b) and (c) of this section, the Executive Director of WHCNAA shall annually convene appropriate representatives of WHCNAA member agencies to share best practices, track progress on implementing the recommendations, and evaluate the need for reassessment of funding.

(e) Following submission of the recommendations described in subsection (c) of this section, WHCNAA member agencies shall report annually to the Director of OMB on progress made in response to such recommendations. The Director of OMB shall provide a summary of agencies' progress and any new recommendations to Tribal leaders at the annual White House Tribal Nations Summit.

Sec. 5. *Agency Actions to Increase the Accessibility, Equity, Flexibility, and Utility of Federal Funding and Support Programs for Tribal Nations.* Agency heads shall take the following actions to increase the accessibility, equity, flexibility, and utility of Federal funding and support programs for Tribal Nations, while increasing the transparency and efficiency of Federal funding processes to better live up to the Federal Government's trust responsibilities and support Tribal self-determination:

(a) Agencies shall design, revise, provide waivers for, and otherwise administer Federal funding and support programs for Tribal Nations to achieve the following objectives, to the maximum extent practicable and consistent with applicable law:

(i) promote compacting, contracting, co-management, co-stewardship, and other agreements with Tribal Nations that allow them to partner with the Federal Government to administer Federal programs and services;

(ii) identify funding programs that may allow for Tribal set-asides or other similar resource or benefits prioritization measures and, where appropriate, establish Tribal set-asides or prioritization measures that meet the needs of Tribal Nations;

(iii) design application and reporting criteria and processes in ways that reduce administrative burdens, including by consolidating and streamlining such criteria and processes within individual agencies;

(iv) take into account the unique needs, limited capacity, or significant barriers faced by Tribal Nations by providing reasonable and appropriate exceptions or accommodations where necessary;

(v) increase the flexibility of Federal funding for Tribal Nations by removing, where feasible, unnecessary limitations on Tribal spending, including by maximizing the portion of Federal funding that can be used for training, administrative costs, and additional personnel;

(vi) improve accessibility by identifying matching or cost-sharing requirements that may unduly reduce the ability of Tribal Nations to access resources and removing those burdens where appropriate;

(vii) respect Tribal data sovereignty and recognize the importance of Indigenous Knowledge by, when appropriate and permitted by statute, allowing Tribal Nations to use self-certified data and avoiding the establishment of processes that require Tribal Nations to apply to, or obtain permission from, State or local governments to access Federal funding or to be part of a Federal program;

(viii) provide Tribal Nations with the flexibility to apply for Federal funding and support programs through inter-Tribal consortia or other entities while requiring non-Tribal entities that apply for Federal funding on behalf of, or to directly benefit, Tribal Nations to include proof of Tribal consent; and

(ix) provide ongoing outreach and technical assistance to Tribal Nations throughout the application and implementation process while continually improving agencies' understanding of Tribal Nations' unique needs through Tribal consultation and meaningful partnerships.

(b) Agencies, in coordination with OMB and consistent with applicable law, should assess Tribal Nations' access to competitive grant funding by tracking applications from Tribal Nations to competitive grant programs and their funding award success rate.

(c) Agencies should proactively and systematically identify and address, where possible, any additional undue burdens not discussed in this order that Tribal Nations face in accessing or effectively using Federal funding and support programs for Tribal Nations and their root causes, including those causes that are regulatory, technological, or process-based.

(d) Agencies' implementation efforts shall appropriately maintain or enhance protections afforded under existing Federal law and policy, including those related to treaty rights and trust obligations, Tribal sovereignty and jurisdiction, civil rights, civil liberties, privacy, confidentiality, Indigenous Knowledge, and information access and security.

(e) The WHCNAA, with support from the Secretary of the Interior as appropriate, shall ensure that Tribal Nations can easily identify in one location all sources of Federal funding and support programs for Tribal Nations, and all agencies that provide such funding shall coordinate with the Secretary of the Interior or the Secretary's designee to compile and regularly update the necessary information to support this resource.

(f) Agencies shall identify opportunities, as appropriate and consistent with applicable law, to modify their respective regulations, internal and

public-facing guidance, internal budget development processes, and policies to include responsiveness to and support for the needs of Tribal Nations as part of their respective agencies' missions.

(g) Agencies shall issue internal guidance or directives, and provide additional staff training or support, as needed and as appropriate and consistent with applicable law, to promote the implementation of the leading practices identified in this section and their integration into agencies' processes for developing policies and programs.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

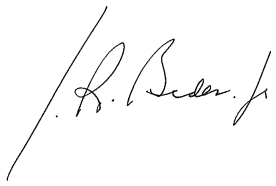
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Agencies not covered by section 2(a) of this order, including independent agencies, are strongly encouraged to comply with the provisions of this order.

(d) This order is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
December 6, 2023.

[FR Doc. 2023–27318
Filed 12–8–23; 11:15 am]
Billing code 3395–F4–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 236 December 11, 2023

Part III

Federal Reserve System

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company; Notice

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments 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 December 26, 2023.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *Walter & Carole Young Living Trust, Stephen U. Samaha, as co-trustee, both of Littleton, New Hampshire; and Neil I. Geschwind, as co-trustee, Hauppauge, New York;* a group acting in concert, to retain voting shares of Guaranty Bancorp, Inc., and thereby indirectly retain voting shares of Woodsville Guaranty Savings Bank, both of Woodsville, New Hampshire.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *Kellye Lynee Ortega and Myrhanda Ortega, both of Edinburg, Texas;* as a group acting in concert, to acquire voting shares of TNB Bancshares, Inc., and thereby indirectly acquire voting shares of Texas National Bank, both of Mercedes, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–27140 Filed 12–8–23; 8:45 am]

BILLING CODE P

Reader Aids

Federal Register

Vol. 88, No. 236

Monday, December 11, 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, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

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.

3 CFR

Proclamations:
10679 84679
10680 84681
10681 84683
10682 85091
10683 85817

Executive Orders:
12977 (Superseded and revoked by EO 14111) 83809
14111 83809
14112 86021

5 CFR

Ch. CIII 85467
531 85467
315 84685
335 84685
2412 84067

7 CFR

301 85469
989 85819
3550 85470

Proposed Rules:
923 85519
926 85130
927 83870
929 85130
930 84075
1005 84038
1006 84038
1007 84038

10 CFR

50 85824
52 85824
100 85824
429 84188
431 84188

Proposed Rules:
Ch. III 84082

12 CFR

609 85825

Proposed Rules:
364 84089

13 CFR

Proposed Rules:
121 85852

14 CFR

Ch. I 85474
39 ..... 83813, 83817, 83820, 83822, 84690, 84693, 85093, 85833, 85836
71 ..... 84071, 85094, 85472, 85473
73 84695
97 ..... 84233, 84234

Proposed Rules:
39 ..... 84759, 84761, 84764, 84767, 85856
71 ..... 83873, 83874, 83875, 85133, 85135, 85519, 85523, 85858, 85860
91 84090
120 85137
121 84090
125 84090
135 84090

15 CFR

738 85479
740 ..... 85479, 85487
742 85479
744 ..... 85095, 85487
774 85479

Proposed Rules:
740 85734
744 85734

16 CFR

423 85495

Proposed Rules:
425 85525
1110 85760
1264 85861
1408 85862

17 CFR

230 85396
240 84454

20 CFR

404 85104

20 CFR

Proposed Rules:
416 83877

21 CFR

510 84696
516 84696
520 84696
522 84696
524 84696
558 84696
1308 85104

22 CFR

42 85109
121 84072

23 CFR

490 85364

24 CFR

Proposed Rules:
115 85529
125 85529

247.....83877
880.....83877
884.....83877
886.....83877
891.....83877
966.....83877

26 CFR

Proposed Rules:
1.....84098, 84770
5.....84770
301.....84770
602.....84770

30 CFR

946.....85838

32 CFR

286.....84236

33 CFR

100 .....84238, 85110, 85496
117.....85111, 85498
165 .....83825, 83827, 84238, 85112, 85500

Proposed Rules:
165.....84249
334.....85115

34 CFR

662.....85502
663.....85502

36 CFR

212.....84704
214.....84704
251.....84704

37 CFR

386.....84710

38 CFR

21.....84239

Proposed Rules:
36.....85863

39 CFR

111.....85508
233.....85851

Proposed Rules:
111.....84251
3050.....83887

40 CFR

52 .....83828, 84241, 84626, 85112, 85511
62.....85124
261.....84710
262.....84710
266.....84710
704.....84242

Proposed Rules:
63.....83889
131.....85530
141.....84878
142.....84878

42 CFR

430.....84713
435.....84713

Proposed Rules:
93.....84116
1001.....84116

45 CFR

16.....84713

47 CFR

1.....85514
25.....84737
51.....83828
52.....85794
54.....83829, 84406
63.....85514
64.....84406, 85794
97.....85126

Proposed Rules:
1.....85553
25.....85553
54.....85157
73.....84771
97.....85171

48 CFR

Proposed Rules:
1401.....85172
1402.....85172
1403.....85172
1405.....85172
1414.....85172
1416.....85172
1419.....85172
1426.....85172
1431.....85172
1442.....85172
1443.....85172
1449.....85172

49 CFR

571.....84514

Proposed Rules:
215.....85561

50 CFR

300.....83830
622.....83860
635.....85517
648.....84243
660.....83830
679.....84248, 84754

Proposed Rules:
17.....84252, 85177
223.....85178
224.....85178
648.....83893
679.....84278, 85184

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 November 24, 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.