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Title 3—

Proclamation 10780 of June 26, 2024

The President

Granting Pardon for Certain Violations of Article 125 Under the Uniform Code of Military Justice

By the President of the United States of America

A Proclamation

Our Nation has made tremendous progress in advancing the cause of equality for LGBTQI+ Americans, including in the military. Despite their courage and great sacrifice, thousands of LGBTQI+ service members were forced out of the military because of their sexual orientation or gender identity. Many of these patriotic Americans were subject to a court-martial. While my Administration has taken meaningful action to remedy these problems, the impact of that historical injustice remains. As Commander in Chief, I am committed to maintaining the finest fighting force in the world. That means making sure that every member of our military feels safe and respected.

Accordingly, acting pursuant to the grant of authority in Article II, Section 2, of the Constitution of the United States, I, Joseph R. Biden Jr., do hereby grant a full, complete, and unconditional pardon to persons convicted of unaggravated offenses based on consensual, private conduct with persons age 18 and older under former Article 125 of the Uniform Code of Military Justice (UCMJ), as previously codified at 10 U.S.C. 925, as well as attempts, conspiracies, and solicitations to commit such acts under Articles 80, 81, and 82, UCMJ, 10 U.S.C. 880, 881, 882. This proclamation applies to convictions during the period from Article 125's effective date of May 31, 1951, through the December 26, 2013, enactment of section 1707 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113–66).

The purpose of this proclamation is to pardon only offenses based on consensual, private conduct between individuals 18 and older that do not involve any aggravating factor, including:

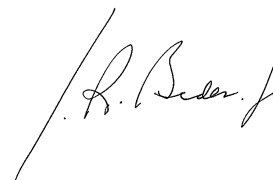
- (1) conduct that would violate 10 U.S.C. 893a, prohibiting activities with military recruits or trainees by a person in a position of special trust;
- (2) conduct that was committed with an individual who was coerced or, because of status, might not have felt able to refuse consent;
- (3) conduct on the part of the applicant constituting fraternization under Article 134 of the UCMJ;
- (4) conduct committed with the spouse of another military member; or
- (5) any factors other than those listed above that were identified by the United States Court of Appeals for the Armed Forces in *United States v. Marcum* as being outside the scope of *Lawrence v. Texas* as applied in the military context, 60 M.J. 198, 207–08 (2004).

The Military Departments (Army, Navy, or Air Force), or in the case of the Coast Guard, the Department of Homeland Security, in conjunction with the Department of Justice, shall provide information about and publicize application procedures for certificates of pardon. An applicant for a certificate of pardon under this proclamation is to submit an application to the Military Department (Army, Navy, or Air Force) that conducted the court-martial or, in the case of a Coast Guard court-martial, to the Department of Homeland Security. If the relevant Department determines that the applicant satisfies the criteria under this proclamation, following a review of relevant military

justice records, the Department shall submit that determination to the Attorney General, acting through the Pardon Attorney, who shall then issue a certificate of pardon along with information on the process to apply for an upgrade of military discharge. My Administration strongly encourages veterans who receive a certificate of pardon to apply for an upgrade of military discharge.

Although the pardon under this proclamation applies only to the convictions described above, there are other LGBTQI+ individuals who served our Nation and were convicted of other crimes because of their sexual orientation or gender identity. It is the policy of my Administration to expeditiously consider and to make final pardon determinations with respect to such individuals.

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

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Rules and Regulations

Federal Register

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

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1416

[Docket ID: CCC–2024–0002]

RIN 0560–AI67

Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP)

AGENCY: Commodity Credit Corporation (CCC) and Farm Service Agency (FSA), USDA.

ACTION: Final rule.

SUMMARY: This rule makes changes to ELAP to provide financial assistance to dairy producers who face milk losses due to H5N1 infection of their dairy herds.

DATES: *Effective* July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Seth Cross; telephone: (402) 309–3338; email: seth.cross@usda.gov. Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

As authorized by section 1501 of the Agricultural Act of 2014 (Pub. L. 113–79, 7 U.S.C. 9081(d)), ELAP provides emergency relief to eligible producers of livestock, honeybees, and farm-raised fish to aid in the reduction of losses due to disease (including cattle tick fever), adverse weather, or other conditions, such as blizzards and wildfires, as determined by the Secretary of Agriculture, that are not covered by the Livestock Forage Disaster Program

(LFP)¹ or the Livestock Indemnity Program (LIP).² FSA, which administers ELAP on behalf of CCC, identified discretionary changes to the ELAP regulations; this rule is making those changes in 7 CFR part 1416, subpart B, as described below.

Highly Pathogenic Avian Influenza (HPAI) H5N1 clade 2.3.4.4b (referred to as H5N1 hereafter) infection in dairy cattle results in milk losses for dairy producers due to removal of symptomatic dairy cattle from commercial milk production and reduced production after the dairy cattle recover from H5N1 infection.³ The Secretary has determined that ELAP is authorized to provide financial assistance to eligible dairy producers to cover a portion of the financial loss incurred because of milk production loss due to H5N1 infection in dairy cattle. Milk losses due to H5N1 that were incurred prior to the publication of this rule are eligible for payment if they meet all eligibility requirements described in this rule.

Producer Eligibility

To be eligible for milk losses due to H5N1, a producer must prove that at least one adult dairy cow in their herd has an H5N1 infection by submitting a positive test, as defined in the Animal and Plant Health Inspection Service (APHIS) H5N1 case definition,⁴ on individual animal or bulk tank samples confirmed at National Veterinary Services Laboratories (NVSL). The date of the eligible loss condition is the positive H5N1 test collection date, meaning the date the sample was taken

¹ LFP provides benefits to livestock producers who suffer eligible grazing losses due to qualifying drought or are prohibited by a federal agency from grazing on managed rangeland due to a fire. See 7 CFR part 1416, subpart C, and <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/livestock-forage/index>.

² LIP provides benefits to livestock producers for livestock deaths due to eligible adverse weather, eligible disease, or eligible attacks by animals reintroduced into the wild by the Federal Government. See 7 CFR part 1416, subpart D, and <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/livestock-indemnity/index>.

³ For more information regarding H5N1, see <https://www.cdc.gov/flu/avianflu/> and <https://www.aphis.usda.gov/livestock-poultry-disease/avian/avian-influenza>. For biosecurity resources for detection of HPAI in livestock, see <https://www.aphis.usda.gov/livestock-poultry-disease/avian/avian-influenza/hpai-detections/livestock>.

⁴ See <https://www.aphis.usda.gov/sites/default/files/hpai-livestock-case-definition.pdf>.

from the cow, because that is the date on which H5N1 infection was confirmed to be present in the producer's herd. Throughout this rule, "herd" refers to one or more dairy cows that are under common ownership or supervision and are grouped on a single premises (lot, farm, or ranch) or multiple premises that are geographically separated, but physically located in the same county, as shared personnel and equipment in addition to the movement of livestock are recognized risks for disease transmission.

In addition, a producer must have owned, cash-leased, purchased, or been a contract grower of eligible adult dairy cows for not less than 60 days before the positive H5N1 test collection date. Regardless of ownership type, the producer must have had financial risk in the production of milk from the eligible adult dairy cow at the time of the positive H5N1 test collection date. For example, if an owner of eligible adult dairy cows has cash leased those animals to another producer who is entitled to the milk production under the terms of the lease, the owner of the cows is not considered to have financial risk in the milk production and is not eligible, and only the producer entitled to the milk production may participate. In addition, all general ELAP eligibility rules apply to producers applying for payment for milk losses due to H5N1.⁵

Dairy Cow Eligibility

To be considered an eligible adult dairy cow for milk losses due to H5N1 under ELAP, it must be all of the following:

- Currently in one of the lactation phases (early, mid, or late) of their lactation cycle and producing milk in which the producer had financial risk at the time of the positive H5N1 test collection date;
- Owned, cash-leased, purchased, or been raised by a contract grower or eligible livestock owner, for not less than 60 days before the positive H5N1 test collection date;
- Maintained for commercial milk production as part of the producer's farming operation on the positive H5N1 test collection date;

⁵ See 7 CFR part 1416, subpart A, and 7 CFR part 1400, subpart F.

- Part of a herd that has a minimum of one confirmed positive H5N1 test from NVSL; and
- Initially removed from commercial milk production due to confirmed or suspected H5N1 infection at some point during the time period beginning 14 days before the positive H5N1 test collection date through 120 days after the positive H5N1 test collection date.

The time period beginning 14 days before the positive H5N1 test collection date is used for dairy cow eligibility because of responses recorded by APHIS via epidemiologic surveys as of the publication of this rule: (a) 14 days before a positive H5N1 test collection date is a reasonable time for a producer to recognize symptom onset in cattle with H5N1 infections and collect samples, and (b) the maximum 120 days after a positive H5N1 collection date reflects the time after an initial positive test where H5N1 virus could be detected in the herd based on current APHIS understanding as of the time of publication of this rule, and is consistent with the time period for other APHIS support programs.

An adult dairy cow that meets all of the above requirements is considered eligible to be reported only for the month in which it is initially removed from commercial milk production due to confirmed or suspected H5N1 infection. For example, an eligible adult dairy cow that was removed from commercial milk production on April 22, 2024, and continued to remain removed from milk production through May 12, 2024, should be reported on the application as an eligible adult dairy cow only for the month of April. In order to prevent duplicate benefits for the same loss, an adult dairy cow cannot be reported as an eligible animal for any subsequent month unless the animal has returned to milk production and is later removed from milk production due to a new H5N1 infection in its herd. During the 120 day time period after the initial positive H5N1 test collection date, an animal in that herd is only eligible for payment one time, based on the positive H5N1 test for that herd.

How To Apply

To be eligible for a payment for milk losses, a dairy producer must submit all of the following to FSA:

- Proof of herd infection through a confirmed positive H5N1 test, based on the APHIS H5N1 case definition,⁶ on individual animal or bulk tank samples confirmed at NVSL (preferred individual animal sample types can be

found in the APHIS H5N1 Testing Guidance document⁷);

- A notice of loss (CCC-939) indicating the date of the eligible loss condition, which is the positive H5N1 test collection date; and
- An application for payment (CCC-939-H5N1) certifying the number of eligible adult dairy cows, the month the cows were removed from milk production, and the producer's share of the milk production.

Producers must also submit the following forms, if not already on file with FSA: AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification; AD-2047, Customer Data Worksheet; CCC-901, Member Information for Legal Entities (if applicable); CCC-902, Farm Operating Plan for Payment Eligibility; and CCC-941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information.

FSA may confirm the validity of the positive H5N1 test result with APHIS records. FSA may also request documentation to substantiate the information certified on an application, including current and prior year milk production and herd inventory records, which FSA will use to verify the number of animals in the herd that were removed from production. FSA may request other records, including but not limited to veterinary records and feed records or receipts, if required to support a producer's certifications.

Payment Calculation

FSA will calculate payments for milk loss due to H5N1 by multiplying a per head payment rate by the number of eligible adult dairy cows, multiplied by the producer's share of such dairy cows' milk production, multiplied by an ELAP payment rate of 90 percent as required by 7 U.S.C. 9081(d)(4). The per head payment rate is calculated based on national milk production per head, per month, and a typical number of days that an infected dairy cow is expected to have reduced or no production, which has been established in consultation with APHIS based on available data on the reported effects of H5N1 infection in dairy herds at the time of publication of this rule. In order to streamline delivery of assistance and minimize the reporting burden for dairy producers, FSA has determined that the estimated milk loss per cow due to H5N1 will be based on an expected 21-day period of no milk production when the cow is removed from the milking herd, followed by a period of 7 days

when it has returned to milking but produces approximately 50 percent of the normal amount of production. This approach minimizes the information that a producer would need to track and report to FSA, and it aligns with the estimated loss of milk production based on data reported to APHIS as of the time of publication of this rule. To determine the expected milk production per day, FSA will use the monthly national average production in pounds per head, per month, reported by the National Agricultural Statistics Service (NASS).⁸ FSA determined that national production data will be used because monthly data, which would allow FSA to account for more seasonal variation in milk production, is unavailable at the regional level and for some states. Collecting monthly data at the state or regional level where it is not currently available is not feasible and would delay payments. FSA will divide the NASS monthly average production per cow by 28 days to calculate an estimated average loss of milk in pounds per cow, per day. FSA will then multiply that estimated average loss per day by 21 days to account for the time period when no production is expected. FSA will also multiply the estimated average loss per day by 7 days, multiplied by 50 percent to account for the time period when the dairy cow has returned to milk production but the amount of production is reduced. FSA will add those 2 amounts (for 21 days and 7 days) to calculate the estimated average loss of milk production per cow, which will be multiplied by the all-milk price⁹ to determine the per head payment rate. FSA will use the national all-milk price, which is also used in the Dairy Margin Coverage Program, because price data is not available for all states, and collecting data in states where it is currently unavailable is not feasible and would delay payments.

For example, a dairy producer with a 100 percent share in milk production certifies that 50 eligible adult dairy

⁸ NASS milk production data is available at <https://usda.library.cornell.edu/concern/publications/h989r321c?locale=en>. To locate the national monthly production data for a specific month, open the report published for the relevant payment month and locate the milk per cow for the specific month in the table titled "Estimated Milk Cows and Production by Month—United States."

⁹ The all-milk price is published in a monthly report available at <https://usda.library.cornell.edu/concern/publications/c821gj76b>. To locate the all-milk price for a specific month, open the report published for the relevant payment month and locate the United States price in the table titled "Prices Received for All Milk—States and United States." The report provides the all-milk price in dollars per cwt, and FSA has converted it to dollars per pound for the purpose of calculating the per head payment rate.

⁶ See <https://www.aphis.usda.gov/sites/default/files/hpai-livestock-case-definition.pdf>.

⁷ See <https://www.aphis.usda.gov/sites/default/files/hpai-livestock-testing-recommendations.pdf>.

cows were removed from production in April 2024 due to H5N1 and provides the required documentation of a positive test confirming H5N1 herd infection. The per head payment rate for April is determined by multiplying the expected daily production per cow of 73.18 pounds (based on the NASS monthly national production data) by 100 percent of the milk production loss, multiplied by 21 days (for the first 21 days, which equals 1,536.78), then adding 73.18 pounds multiplied by 50 percent of the milk production loss, multiplied by 7 days (for the last 7 days, which equals 256.13), resulting in a total of 1,792.91 pounds as the estimated lost production. That amount is then multiplied by \$0.205 per pound, which is the all-milk price for April, resulting in a per head payment rate of \$367.55 for April. The producer's ELAP payment will be equal to \$367.55 multiplied by 50 cows, multiplied by a 100 percent share of the producer's milk production, multiplied by the ELAP payment rate of 90 percent, which is equal to \$16,539.75. The producer will update their application to report any animals that are removed from production in a later month within the 120 days of the positive H5N1 test. Each subsequent update must include the beginning date for the month that the cows are removed from milk production.

ELAP payments are not subject to payment limitation. General requirements for ELAP payment eligibility, including AGI limitation, apply to ELAP payments for milk loss.

Other Changes

This rule also makes minor technical corrections to fix typographical errors in paragraph references in § 1416.105(c) and (d).

Notice and Comment, Effective Date, and Exemptions

The Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rule involves a program for payments to certain agricultural commodity producers and thus falls within the exemption for rules related to benefits. Further, as specified in 7 U.S.C. 9091(c)(2), the regulations to implement ELAP are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553; and
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

In addition, 7 U.S.C. 9091(c)(3) directs the Secretary to use the authority provided in 5 U.S.C. 808 (part of the Congressional Review Act), which provides that when an agency finds there is good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the rule may take effect at such time as the agency determines. The beneficiaries of this rule have been impacted by H5N1, which has resulted in economic losses, and the availability of these ELAP payments will encourage testing. FSA finds that a delay in the effective date of the rule is contrary to the public interest and therefore this rule is effective upon publication in the **Federal Register**.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) requires a delay in the effective date for 60 days from the date of publication to allow for Congressional review of rules that meet the criteria specified in 5 U.S.C. 804(2). The Office of Information and Regulatory Affairs has determined that this rule meets the criteria in 5 U.S.C. 804(2). As discussed above, FSA finds that a delay in the effective date of the rule is contrary to the public interest and therefore this rule is effective upon publication in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Executive Order 12866, “Regulatory Planning and Review,” was amended by Executive Order 13563, “Improving Regulation and Regulatory Review,” and Executive Order 14094, “Modernizing Regulatory Review.” Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The assessment should include potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

Executive Order 14094 requires Federal agencies to increase and improve public participation in the regulatory process. The Executive Order's objective is to improve public trust in the regulatory process by reducing the risk or appearance of unequal or unfair influence in regulatory development.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, and therefore, OMB has not reviewed this rule and an analysis of costs and benefits to loans is not required under either Executive Order 12866 or 13563.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b).

This rule makes discretionary changes to ELAP. The discretionary aspects are to improve administration of ELAP and clarify existing program requirements. FSA is providing the disaster assistance under ELAP to eligible producers. The discretionary provisions would not alter any environmental impacts resulting from implementing the mandatory changes to ELAP. Accordingly, these discretionary aspects are covered by the following Categorical Exclusion in 7 CFR 799.31(b)(6)(vi) safety net programs administered by FSA.

Through this review, FSA determined that the proposed discretionary changes in this rule fit within the categorical exclusions listed above. Categorical exclusions apply when no extraordinary circumstances (§ 799.33) exist. This rule presents only discretionary amendments that will not have an impact on the human environments, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this rule. This rule serves as documentation of the environmental compliance decision for this federal action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Payments for milk losses due to H5N1 will be made retroactively for eligible

losses incurred prior to the publication of this rule, as discussed above. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FSA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have significant Tribal implications that require ongoing adherence to Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is 10.091—Emergency Assistance for Livestock, Honeybees, and Farm-raised Fish Program.

USDA Non-Discrimination Policy

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Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: program.intake@usda.gov.

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List of Subjects in 7 CFR Part 1416

Administrative practice and procedure, Agriculture, Bees, Dairy

products, Disaster assistance, Fruits, Livestock, Nursery stock, Reporting and recordkeeping requirements, Seafood.

For the reasons discussed above, this final rule amends 7 CFR part 1416 as follows:

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

■ 1. The authority citation for part 1416 continues to read as follows:

Authority: Title I, Pub. L. 113–79, 128 Stat. 649; Title I, Pub. L. 115–123; Title VII, Pub. L. 115–141; and Title I, Pub. L. 116–20.

Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

■ 2. In § 1416.102, add the definitions of “All-milk price”, “H5N1”, “H5N1 test”, “Herd”, “NVSL”, and “Positive H5N1 test collection date” in alphabetical order to read as follows:

§ 1416.102 Definitions.

* * * * *

All-milk price means the national average price received, per hundredweight of milk, by dairy operations for all milk sold to dairy plants and milk dealers in the United States, as determined by the Secretary.

* * * * *

H5N1 means Highly Pathogenic Avian Influenza A (HPAI) H5N1 virus as either detected in milk and other bovine-origin samples associated with illness in dairy cattle, or, when pertaining to infection in cattle themselves, as confirmed by means of an H5N1 test.

H5N1 test means a test, as defined in the APHIS H5N1 case definition, on individual animal or bulk tank samples confirmed at NVSL.

Herd means, for milk losses due to H5N1, one or more dairy cows that are under common ownership or supervision and are grouped on a single premises (lot, farm, or ranch) or multiple premises which are geographically separated but physically located in the same county.

* * * * *

NVSL means the APHIS National Veterinary Services Laboratories.

Positive H5N1 test collection date means the date of sample collection for a positive H5N1 test that is reported to an NVSL and indicated on the H5N1 test result.

* * * * *

■ 3. In § 1416.103, add paragraph (j) to read as follows.

§ 1416.103 Eligible losses, adverse weather, and other loss conditions.

* * * * *

(j) For milk losses due to H5N1 to be considered eligible, the producer must have had reduced milk production as a result of removal of adult dairy cows from daily milking due to H5N1 infection. Such infection must be confirmed for the herd by at least one positive H5N1 test for a dairy cow within that herd. The date of the eligible loss condition for milk losses due to H5N1 is the positive H5N1 test collection date.

■ 4. In § 1416.104, add paragraphs (g) and (h) to read as follows.

§ 1416.104 Eligible livestock, honeybees, and farm-raised fish.

* * * * *

(g) To be considered eligible for milk losses due to H5N1, livestock must be adult dairy cows that are:

(1) Currently in one of the lactation phases (early, mid, or late) of their lactation cycle and producing milk in which the producer had financial risk at the time of the positive H5N1 test collection date;

(2) Owned, cash-leased, purchased, or been raised by a contract grower or eligible livestock owner, for not less than 60 days before the date of the eligible loss condition;

(3) Maintained for commercial milk production as part of the producer's farming operation on the positive H5N1 test collection date;

(4) Part of a herd that has a minimum of one positive H5N1 test; and

(5) Initially removed from commercial milk production due to confirmed or suspected H5N1 infection at some point during the time period beginning 14 days before the positive H5N1 test collection date through 120 days after the positive H5N1 test collection date.

(h) An adult dairy cow that meets the requirements of paragraph (g) of this section is considered eligible to be reported for payment only for the month in which it is initially removed from commercial milk production due to confirmed or suspected H5N1 infection. In order to prevent duplicate benefits for the same loss, an adult dairy cow cannot be reported as an eligible animal for any subsequent month after the initial month of eligibility unless the animal has returned to milk production and is later removed from milk production due to a new infection after the initial 120 day eligibility from an APHIS confirmed positive test within the herd. During the 120 day time period after a positive H5N1 test collection date, an animal is only eligible for payment one time,

based on the positive H5N1 test for that herd.

■ 5. Amend § 1416.105 by:

■ a. In paragraph (c), removing “§ 1416.104(g)” and adding “§ 1416.104(e)” in its place and removing “§ 1416.103(h) or (i)” and adding “§ 1416.103(h)” in its place;

■ b. In paragraph (d), removing “§ 1416.104(h)” and adding “§ 1416.104(f)” in its place and removing “§ 1416.103(h) or (j)” and adding “§ 1416.103(i)” in its place; and

■ c. Adding paragraph (f).

The addition reads as follows.

§ 1416.105 Eligible producers, owners, and contract growers.

* * * * *

(f) To be considered an eligible producer for the purpose of milk losses due to H5N1, the producer must have:

(1) Owned, cash-leased, purchased, or been a contract grower of eligible adult dairy cows, as specified in § 1416.104(g), for not less than 60 days before the positive H5N1 test collection date;

(2) Had financial risk in the milk production of the eligible adult dairy cows, as specified in § 1416.104(g), on the positive H5N1 test collection date; and

(3) Had an eligible loss as specified in § 1416.103(j).

■ 6. Amend § 1416.106 by:

■ a. In paragraph (a)(2), introductory text, removing “both” and adding “more” in its place;

■ b. Adding paragraph (a)(2)(iii);

■ c. In paragraph (e), adding a sentence at the end of the paragraph; and

■ d. Adding paragraph (f).

The additions read as follows.

§ 1416.106 Notice of loss and application process.

(a) * * *

(2) * * *

(iii) For milk losses due to H5N1, a completed Emergency Loss Assistance for H5N1 Application;

* * * * *

(e) * * * This paragraph does not apply to documentation for milk losses due to H5N1.

(f) For milk losses due to H5N1, the producer must provide to FSA a positive H5N1 test at the time the application for payment is filed. The producer must also provide current and prior year milk production records and herd inventory records if requested by FSA to substantiate the certified number of eligible adult dairy cows removed from production through a comparison of the per head production rates for the current and prior years. If requested by FSA, the producer must also provide

any other records necessary to substantiate the information provided on the producer's application, including the producer's share of the milk production. An eligible adult dairy cow must be reported on the application for the month it was initially removed from milk production and cannot be included in subsequent months in the same application for payment. If the producer removes adult dairy cows from commercial milk production due to H5N1 infection more than 120 days after the positive H5N1 test reported to FSA, the producer must submit another notice of loss and application for payment for the subsequent positive H5N1 test after the initial 120 day eligibility from an APHIS confirmed positive test within the herd.

■ 7. Amend § 1416.107 by:

■ a. In paragraph (a)(1), removing “honeybees” and adding “honeybees and milk” in its place;

■ b. Redesignating paragraph (a)(3) as paragraph (a)(4); and

■ c. Adding a new paragraph (a)(3).

The addition reads as follows.

§ 1416.107 Notice of loss and application period.

(a) * * *

(3) For milk losses due to H5N1, provide a notice of loss and positive H5N1 test result required by § 1416.106(f) to FSA by the application for payment deadline in paragraph (b) of this section;

* * * * *

■ 8. Amend § 1416.109 by revising the section heading and adding paragraph (d) to read as follows:

§ 1416.109 National payment rate.

* * * * *

(d) For an eligible livestock producer with milk losses due to H5N1, payments calculated in § 1416.113 will be based on a national payment rate of 90 percent.

■ 9. Add § 1416.113 to read as follows.

§ 1416.113 Milk losses due to H5N1.

(a) Payments for milk losses due to H5N1 are based on a standard number of days of lost production and the expected production for an eligible adult dairy cow. The payment for milk losses due to H5N1 is equal to the payment rate per head specified in paragraph (b) of this section, multiplied by the number of eligible adult dairy cows specified in § 1416.109(g), multiplied by the producer's share of milk production from the eligible adult dairy cows, multiplied by the national payment rate specified in § 1416.109(d).

(b) The payment rate per head varies by month and is equal to the expected

milk production loss for an eligible adult dairy cow, as determined by FSA, multiplied by the all-milk price. The applicable payment rate will be determined by the month in which an eligible adult dairy cow was removed from milk production, as reported on the application. To determine the expected milk production loss for an eligible adult dairy cow, FSA will:

(1) Determine the daily expected production by dividing the total expected production for 28 days of production, as determined by FSA based on a month-specific national production value obtained from NASS data, by 28 days; and

(2) Calculate the sum of:

(i) The result of paragraph (b)(1) of this section multiplied by 21 days, and
(ii) The result of paragraph (b)(1) of this section multiplied by 7 days, multiplied by 50 percent.

(c) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

William Marlow,

Acting Executive Vice President, Commodity Credit Corporation, and Acting Administrator, Farm Service Agency.

[FR Doc. 2024–14412 Filed 6–28–24; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 612

RIN 1901–AB57

Civil Nuclear Credit Program and Recapture of Credits

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or the Department) is adopting the interim final rule (IFR) published on January 8, 2024, as final, without change. This final rule establishes the procedure for the recapture of credits awarded under the Civil Nuclear Credit (CNC) Program in accordance with the Infrastructure Investment and Jobs Act.

DATES: This rule is effective on July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore Taylor, Civil Nuclear Credit Program Manager, U.S. Department of Energy, Grid Deployment Office, 1000 Independence Avenue SW, Washington, DC 20585, (240) 477–0458, CNC_Program_Mailbox@hq.doe.gov.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices and comments, can be found at [Regulations.gov](https://www.regulations.gov)

(www.regulations.gov/document/DOE-HQ-2024-0005). The docket web page contains instruction on how to access all documents, including public comments, in the docket.

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I. Summary of the Final Rule

Section 40323 of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58), codified at 42 U.S.C. 18753, also known as the Bipartisan Infrastructure Law, directs the Department to establish the Civil Nuclear Credit Program to prevent premature closures of nuclear power plants by providing financial support for existing nuclear reactors projected to cease operations due to economic factors.

The IIJA also directs the Department to promulgate a regulation to provide for the recapture of credits awarded to a nuclear reactor if either (a) the nuclear reactor terminates operations during the 4-year award period or (b) the nuclear reactor does not operate at an annual loss in the absence of an allocation of credits. The purpose of this final rule is to establish the procedure for the recapture of credits under the CNC Program. The rule provides a mechanism for the Department to enforce the obligation of the nuclear reactor to continue operation during the 4-year award period and to relinquish its rights to credits if the nuclear reactor is not operating at a loss in the absence of the credits. To minimize the

likelihood for the need to recapture credits under the rule, the Department has included in the CNC Program an audit and annual payment adjustment mechanism at the end of each award year during the 4-year award period to evaluate the financial results of operation for that year and to adjust payment of credits based on that evaluation. The recapture regulation ensures that a reactor cannot retain the value of credits if, despite the annual adjustment, the nuclear reactor would not have operated at an annual loss in the absence of an allocation of credits over the 4-year award period or if the nuclear reactor terminates operations despite its contractual obligation to operate for the entire 4-year award period.

II. Authority and Background

A. The Statute

Section 40323 of the IIJA directs the Department to establish the CNC Program to provide financial support for existing nuclear reactors projected to cease operations due to economic factors in the form of credits to be awarded for a 4-year award period. Section 40323(g)(2) of the IIJA requires that the Secretary, “by regulation, provide for the recapture of the allocation of any credit to a certified nuclear reactor that during [the 4-year award period]—(A) terminates operations; or (B) does not operate at an annual loss in the absence of an allocation of credits to the certified nuclear reactor.” IIJA section 40323(g)(2). This final rule establishes the procedure for the recapture of credits in accordance with that requirement. This final rule relates only to the recapture provision. No other provision of the CNC Program is subject to implementation by regulation.

B. Interim Final Rule

On January 8, 2024, DOE published an IFR and request for comments. 89 FR 864 (Jan. 8, 2024). The IFR established an interim final rule for the recapture of credits awarded under the CNC Program. DOE accepted public comments through February 7, 2024. DOE received three comments, none of which commented on the text of the regulation itself.

III. Public Comments on the IFR

DOE received three comments from individuals in response to the IFR. These comments are available in the public docket for this rulemaking. One commenter expressed “strong support” for both the CNC Program and IFR. The commenter described the CNC Program

as a “vital and timely policy” that supports grid reliability and resilience, promotes high paying jobs, enhances national security, and fosters innovation. The commenter stated that the recapture provision ensures “accountability and transparency of the program” and is “sound and consistent” with the IJA. The commenter also offered feedback outside the scope of the IFR, recommending that DOE revise the CNC Program Guidance to define a “competitive market” and what constitutes a material amount of revenue from competitive sources, neither of which is necessary for the recapture rule.

Another commenter stated that the CNC Program is “beneficial to the nation’s movement towards cleaner energy” and expressed the importance of keeping existing nuclear power plants running for the people who rely on their power. The commenter also observed that these plants “won’t be able to function forever” and urged that “this should be treated as a transitory period for these plants while we move towards a less harmful energy source” like wind and solar.

The third commenter submitted a comment outside the scope of the IFR relating to energy costs.

IV. Section by Section Analysis of the Final Rule

A. Purpose, Applicability, and Definitions

Section 612.1 of the final rule identifies the purpose of the regulations to set forth the procedure by which the Department may recapture credits awarded pursuant to the CNC Program. Section 612.2 provides that the regulations will apply to an owner or operator of a nuclear reactor that is awarded credits under the CNC Program. Section 612.3 contains defined terms used in the rule.

B. Recapture

Section 612.4(a) of the regulation identifies the two circumstances in which credits will be recaptured: (1) if the nuclear reactor terminates operation during the award period or (2) at the conclusion of the award period if the nuclear reactor would not have operated at an annual loss in the absence of the credits.

Section 612.4(b) addresses the first circumstance in which recapture will be pursued, namely termination by the nuclear reactor of operations during the award period. In that instance, the Secretary will rescind the award of any unpaid credits, including the credits for the award year in which the termination

occurred and for any remaining award years in the award period. In addition, the Department will require the owner or operator to repay the value of credits paid with respect to a prior award year if the Department determines that the nuclear reactor terminated operations as a result of the owner or operator’s failure to adhere to prudent industry practice in the operation of the nuclear reactor during the award period.

Section 612.4(c) addresses recapture in the circumstance in which the Secretary determines that the nuclear reactor, during the award period, would not have operated at an annual loss in the absence of the credits. To make this determination, the Department will calculate the recapture amount in the same manner as the annual adjustment of credits is calculated. Although this scenario is unlikely because the recapture analysis will use the same evaluation methodology as the annual adjustment calculation, it could occur if, for example, subsequent information became available that differs from the data relied on in the annual adjustment calculation.

C. Notice and Reconsideration of Recapture Determination

Section 612.5 of the regulation identifies (1) the manner in which the Secretary will notify an owner or operator of its determination to recapture credits and payments for previously paid credits, if any, (2) how an owner or operator may request reconsideration of the recapture determination, and (3) the effective date of a recapture determination. This section also specifies that notices issued with respect to recapture will be public, except that data and supporting documentation constituting confidential business information will not be disclosed.

D. Petition to the Department’s Office of Hearings and Appeals

Section 612.6 provides that an owner or operator of a nuclear reactor that is aggrieved by the Secretary’s decision to affirm, withdraw, or modify the notice of recapture as provided in paragraph (c) of § 612.5 may file a petition with the Department’s Office of Hearings and Appeals in accordance with 10 CFR 1003.11, not later than thirty days after notification of the Secretary’s decision.

V. Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), as supplemented and

reaffirmed by Executive Order 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011) and amended by Executive Order 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this preamble, this regulatory action is consistent with these principles.

Section 6(a) of Executive Order 12866 requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this final rule does not constitute a “significant regulatory action” within the scope of Executive Order 12866. Accordingly, this action was not subject to review under that Executive Order by OIRA.

B. Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Executive Order 13132 requires agencies

to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and to carefully assess the necessity for such actions. DOE has examined this final rule and has determined that it does not preempt State law and does 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. Moreover, the recapture regulation is required by statute. No further action is required by Executive Order 13132.

C. National Environmental Policy Act of 1969

In this final rule, DOE establishes the procedure for the recapture of credits awarded under the CNC Program. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that promulgating procedures for the recapture of credits through administrative and audit procedures is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A6. Therefore, DOE has determined that promulgation of the recapture rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an environmental impact assessment or an environmental impact statement.

D. Paperwork Reduction Act of 1995

This final rule imposes no information collection requirements subject to the Paperwork Reduction Act.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed in the IFR, DOE has determined that prior notice and opportunity for public comment is unnecessary under the Administrative Procedures Act (APA). Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this final rule. See 5 U.S.C. 601(2), 603(a).

F. Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that each executive agency make every reasonable effort to ensure that when it issues a regulation, the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and has determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of state, local, and Tribal governments on a proposed "significant intergovernmental

mandate," and requires an agency to plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. This policy is also available at www.energy.gov/gc/office-general-counsel under "Guidance & Opinions" (Rulemaking). DOE examined this final rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines, which are available at www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

J. Executive Order 12630

Pursuant to Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (Mar. 15, 1988), DOE has determined that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule establishes a procedure to recapture credits awarded under the CNC Program and, therefore, does not meet any of the three criteria listed above. It is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that this rule does not meet the criteria set forth in 5 U.S.C. 804(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 612

Civil nuclear credit program, Nuclear energy, Nuclear power plants and reactors, Petition to the Department of Energy’s Office of Hearings and Appeals, Recapture of civil nuclear credits.

Signing Authority

This document of the Department of Energy was signed on June 21, 2024, by Maria D. Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature 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 June 25, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

PART 612—RECAPTURE OF CIVIL NUCLEAR CREDITS

■ Accordingly, the interim final rule amending chapter II, subchapter H, of title 10, part 612, of the Code of Federal Regulations, which was published at 89 FR 864 on January 8, 2024, is adopted as final without change.

[FR Doc. 2024–14244 Filed 6–28–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1849; **Airspace**
Docket No. 24–ANM–76]

RIN 2120–AA66

Amendment of Very High Frequency Omnidirectional Range Federal Airway V–4 in the Vicinity of Burley, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency (VHF) Omnidirectional Range (VOR) Federal Airway V–4 in the vicinity of Burley, ID. The FAA is taking this action to update one of the radials used in the airway description.

DATES: Effective date 0901 UTC, September 5, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual

revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of this final rule and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, **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: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Incorporation by Reference

VOR Federal Airways are published in paragraph 6010 of FAA Order JO 7400.11, **Airspace Designations and Reporting Points**, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next update to FAA Order JO 7400.11. That order 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 Rule

This action amends 14 CFR part 71 by amending VOR Federal Airway V-4 in the vicinity of Burley, ID. The FAA is taking this action to update one of the radials used in the airway description. During a review of VOR Federal Airway V-4, the FAA discovered that V-4 was established without the accuracy of the Terminal Area Route Generation and Traffic Simulation software tool used today. Because of this, there is a one-degree discrepancy in the airway description. The current airway description for V-4 includes the intersection of the Boise, ID, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) 130° and the Burley, ID, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) 292° radials (ALKAL, Fix). The ALKAL Fix has been reviewed and is located at the intersection of the Boise VORTAC 130° and the Burley VOR/DME 293° radials. This action corrects the Burley VOR/DME radial used for defining the ALKAL Fix. The amendment is described below.

V-4: V-4 currently extends between the Tatoosh, WA, VORTAC and the Armel, VA, VOR/DME and includes the intersection of the INT Boise 130° and Burley, ID, 292° radials (ALKAL, Fix). This rule changes the component radials that makeup the ALKAL Fix to the intersection of the Boise VORTAC 130° and Burley VOR/DME 293° radials.

The radials in the V-4 airway description are listed in degrees True north.

This action is an administrative change and does not affect the operating requirements, therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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

number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending Federal Airway V-4 in the vicinity of Burley, ID qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6-5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5-6.5.k., which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1f, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant prepared of an environmental impact statement.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H,

Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V-4 [Amended]

From Tatoosh, WA; INT of Tatoosh 102° and Seattle, WA, 329° radials; Seattle; Yakima, WA; Pendleton, OR; Baker, OR; Boise, ID; INT Boise 130° and Burley, ID, 293° radials; Burley; Malad City, ID; Rock Springs, WY; Cherokee, WY; Laramie, WY; Gill, CO; Thurman, CO; Goodland, KS; Hill City, KS; Salina, KS; Topeka, KS; Kansas City, MO; Hallsville, MO; St. Louis, MO; Troy, IL; Centralia, IL; Pocket City, IN; Louisville, KY; to Lexington, KY. From Charleston, WV; Elkins, WV; Kessel, WV; INT Kessel 097° and Armel, VA, 292° radials; to Armel.

* * * * *

Issued in Washington, DC, on June 24, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–14125 Filed 6–28–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31553; Amdt. No. 4119]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 1, 2024. The compliance date for each

SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2024.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73099. Telephone (405) 954–1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Air Missions (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under

5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 21, 2024.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 8 August 2024

Somerville, NJ, SMQ, RNAV (GPS) RWY 12, Orig–D
Lebanon, OH, I68, RNAV (GPS) RWY 1, Amdt 3A
Milbank, SD, 1D1, RNAV (GPS) RWY 31, Orig–C
Milbank, SD, 1D1, Takeoff Minimums and Obstacle DP, Orig–A

Effective 5 September 2024

Gambell, AK, PAGM, NDB RWY 16, Amdt 1B, CANCELED

Gambell, AK, PAGM, NDB/DME RWY 34, Amdt 2B, CANCELED

Gambell, AK, PAGM, VOR-A, Orig

New Stuyahok, AK, PANW, Takeoff Minimums and Obstacle DP, Amdt 1B

Nondalton, AK, PANO, DUMZU ONE, Graphic DP

Nondalton, AK, 5NN/PANO, ILIAMNA TWO, Graphic DP, CANCELED

Nondalton, AK, 5NN/PANO, RNAV (GPS) RWY 2, Amdt 2

Nondalton, AK, PANO, Takeoff Minimums and Obstacle DP, Amdt 1

Burbank, CA, BUR, RNAV (GPS)-A, Orig-A, CANCELED

Davis, CA, EDU, RNAV (GPS) RWY 17, Amdt 1

Davis, CA, EDU, RNAV (GPS) RWY 35, Orig

Hollister, CA, CVH, RNAV (GPS) RWY 13, Orig

Hollister, CA, CVH, RNAV (GPS) RWY 31, Amdt 2

Oakdale, CA, O27, VOR-A, Amdt 1, CANCELED

Oceanside, CA, OKB, VOR-A, Amdt 4

San Jose, CA, KRHV, HENCE ONE, Graphic DP

San Jose, CA, KRHV, Takeoff Minimums and Obstacle DP, Amdt 1

Victorville, CA, VCV, RNAV (GPS) RWY 3, Orig

Middletown, DE, EVY, NDB-A, Amdt 8C, CANCELED

Marathon, FL, MTH, NDB-A, Orig-B, CANCELED

Jefferson, GA, JCA, VOR RWY 35, Amdt 4

Thomasville, GA, TVI, ILS OR LOC RWY 22, Amdt 2, CANCELED

Waynesboro, GA, BXG, RNAV (GPS) RWY 8, Amdt 1

Waynesboro, GA, BXG, RNAV (GPS) RWY 26, Amdt 1

Waynesboro, GA, KBXG, Takeoff Minimums and Obstacle DP, Amdt 1

Jerome, ID, JER, RNAV (GPS) RWY 27, Amdt 2

Chicago/Prospect Heights/Wheeling, IL, PWK, RNAV (GPS) RWY 30, Amdt 1

Chicago/Rockford, IL, KRFD, RADAR-1, Amdt 11

Columbus, IN, BAK, RNAV (GPS) RWY 32, Amdt 1A

Knox, IN, OXI, RNAV (GPS) RWY 18, Amdt 1

Prestonsburg, KY, SJS, RNAV (GPS) RWY 3, Amdt 2A

Sault Ste Marie, MI, CIU, RNAV (GPS) RWY 16, Amdt 2

Traverse City, MI, TVC, ILS OR LOC RWY 10, Orig-A

St Louis, MO, KSTL, Takeoff Minimums and Obstacle DP, Amdt 4

Reidsville, NC, SIF, NDB RWY 31, Amdt 5C, CANCELED

Reidsville, NC, SIF, VOR-A, Amdt 10

Fairmont, NE, FMZ, NDB RWY 17, Amdt 2A

Fairmont, NE, FMZ, NDB RWY 35, Amdt 3A

Fairmont, NE, FMZ, RNAV (GPS) RWY 17, Amdt 1B

Fairmont, NE, FMZ, RNAV (GPS) RWY 35, Amdt 1B

Fairmont, NE, KFMZ, Takeoff Minimums and Obstacle DP, Amdt 2

Hastings, NE, HSI, RNAV (GPS) RWY 4, Amdt 1

Hastings, NE, HSI, VOR RWY 14, Amdt 17, CANCELED

Hastings, NE, HSI, VOR RWY 32, Amdt 14B, CANCELED

Ogallala, NE, OGA, VOR RWY 26, Amdt 2

Red Cloud, NE, 7V7, RNAV (GPS) RWY 16, Amdt 1

Red Cloud, NE, 7V7, RNAV (GPS) RWY 34, Amdt 1

Willoughby, OH, LNN, NDB RWY 10, Amdt 10B, CANCELED

Walterboro, SC, KRBW, Takeoff Minimums and Obstacle DP, Amdt 2A

Mountain City, TN, 6A4, RNAV (GPS) RWY 7, Amdt 1

Mountain City, TN, 6A4, RNAV (GPS) RWY 25, Orig-C

Mountain City, TN, 6A4, Takeoff Minimums and Obstacle DP, Amdt 1A

Gilmer, TX, JXI, RNAV (GPS) RWY 36, Amdt 1

Lubbock, TX, LBB, VOR-A, Amdt 6D, CANCELED

Lubbock, TX, LBB, VOR/DME OR TACAN RWY 26, Amdt 11B, CANCELED

Mason, TX, T92, VOR-A, Amdt 4B, CANCELED

San Angelo, TX, SJT, RNAV (GPS) RWY 36, Orig-A

Franklin, VA, FKN, RNAV (GPS) RWY 9, Amdt 1D

Franklin, VA, FKN, RNAV (GPS) RWY 27, Amdt 2

Roanoke, VA, ROA, ILS OR LOC RWY 34, Amdt 15

Roanoke, VA, ROA, LDA Y RWY 6, Amdt 13

Roanoke, VA, ROA, LDA Z RWY 6, Amdt 1

Roanoke, VA, ROA, RNAV (GPS) Y RWY 6, Amdt 3B

Roanoke, VA, ROA, VOR/DME-A, Amdt 7B, CANCELED

La Crosse, WI, LSE, ILS OR LOC RWY 18, Amdt 23

La Crosse, WI, LSE, RNAV (GPS) RWY 18, Amdt 1

Reedsburg, WI, C35, RNAV (GPS) RWY 36, Amdt 1A

Evanston, WY, EVW, VOR/DME RWY 5, Orig-A, CANCELED

[FR Doc. 2024-14280 Filed 6-28-24; 8:45 am]

BILLING CODE 4910-13-P**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 97****[Docket No. 31554; Amdt. No. 4120]****Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and

associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 1, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 2024.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590-0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26,

Room 217, Oklahoma City, OK 73099.
Telephone: (405) 954-1139.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Air Missions (P-NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal.

For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is

so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on June 21, 2024.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 14 CFR part 97 is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * **EFFECTIVE UPON PUBLICATION**

AIRAC date	State	City	Airport	FDC No.	FDC date	Procedure name
8–Aug–24	NE	Cambridge	Cambridge Muni	4/1986	6/6/2024	RNAV (GPS) RWY 15, Amdt 1.
8–Aug–24	NE	Cambridge	Cambridge Muni	4/1988	6/6/2024.	RNAV (GPS) RWY 33, Amdt 1
8–Aug–24	GA	Alma	Bacon County	4/3024	4/19/2024	RNAV (GPS) RWY 34, Amdt 2.
8–Aug–24	NM	Moriarty	Moriarty Muni	4/3160	5/10/2024	RNAV (GPS) RWY 26, Orig–C.
8–Aug–24	NM	Moriarty	Moriarty Muni	4/3161	5/10/2024	RNAV (GPS) RWY 8, Orig–A.

DEPARTMENT OF JUSTICE**28 CFR Part 20**

[Docket No. FBI-157; AG Order No. 5949-2024]

RIN 1110-AA34

**Bipartisan Safer Communities Act—
Access to Records of Stolen Firearms
in the National Crime Information
Center**

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The United States Department of Justice (“Department”) is publishing an interim final rule that amends the regulations pertaining to criminal justice information systems of the Federal Bureau of Investigation (“FBI”), specifically the National Crime Information Center (“NCIC”). This rule implements parts of the Bipartisan Safer Communities Act (“BSCA” or “Act”) and will allow a person who is licensed as an importer, manufacturer, or dealer of firearms (“licensee”) to access records of stolen firearms in the NCIC, subject to appropriate controls, for the purpose of voluntarily verifying whether firearms offered for sale to such a licensee have been reported as stolen.

DATES:

Effective Date: This rule is effective on July 1, 2024.

Comment Date: Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before July 31, 2024. Written comments postmarked on or before that date will be considered timely. The Federal eRulemaking portal at <https://www.regulations.gov> will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: You may submit written comments, identified by RIN 1110-AA34 or Docket No. FBI-157, by one of the following methods:

(1) *Federal eRulemaking Portal:* <https://www.regulations.gov> (recommended). Follow the instructions for submitting comments; or

(2) *Mail:* Theodore K. Yoneda, Attorney-Advisor, Federal Bureau of Investigation, Office of the General Counsel, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0110.

FOR FURTHER INFORMATION CONTACT: Scott E. Schubert, Chief, Federal Bureau of Investigation, Law Enforcement Engagement and Data Sharing Section.

Telephone: (304) 625-2000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:**I. Posting of Public Comments**

The Department welcomes public comments from any interested person on any aspect of the changes made by this interim final rule. Please refer to the **ADDRESSES** section above. The Department will consider all public comments in the drafting of the final rule.

Please note that all comments received are considered part of the public record and made available for public inspection online at <https://www.regulations.gov>. Information made available for public inspection includes personal identifying information (such as your name, address, etc.) that you voluntarily submit as part of your comment.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to post that comment only partially) on <https://www.regulations.gov>. Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

II. Background

Stolen firearms create risks to public safety. These weapons are often placed into illegal markets, where they can be purchased, sold, and traded without any restrictions. As a result, individuals who are legally prohibited from possessing firearms can obtain and use

these weapons to commit violent crimes. Stolen firearms may also be offered for sale or pawn to a licensee. A licensee could then unknowingly promote illicit weapons trafficking by accepting a stolen firearm into their inventory and selling it to a purchaser.

The FBI manages many systems for the exchange of criminal justice information. This interim final rule implements changes to the regulations related to records maintained in the NCIC Gun File, which is one of 22 files in the NCIC. Seven of these files (including the Gun File) contain information related to property, and the remaining 15 files (including the Wanted Persons File) contain information related to persons. Pursuant to 28 U.S.C. 534, the Attorney General shall exchange identification, criminal identification, crime, and other records for the official use of “authorized officials of the Federal Government, . . . the States, . . . Indian tribes, cities, and penal and other institutions.” This statute also provides that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies, except for dissemination authorized under 28 U.S.C. 534(a)(5). See 28 U.S.C. 534(b).

The BSCA, Public Law 117-159, 136 Stat. 1313, 1331 (2022), requires the Attorney General to provide licensees with information necessary to verify whether firearms offered for sale to such licensees have been stolen. Public Law 117-159, sec. 12004(h)(2) (codified at 28 U.S.C. 534(a)(5)). The Act further requires that the Attorney General “promulgate regulations allowing a person licensed as an importer, manufacturer, or dealer of firearms under chapter 44 of title 18, United States Code, to receive access to records of stolen firearms maintained by the [NCIC] operated by the [FBI], solely for the purpose of voluntarily verifying whether firearms offered for sale to such licensees have been stolen.” Public Law 117-159, sec. 12004(h)(3). The law provides that such regulations shall be promulgated “without regard to chapter 5 of title 5, United States Code.” *Id.*

Accordingly, the FBI is amending title 28 of the Code of Federal Regulations to authorize access to FBI-maintained criminal justice information systems to implement parts of the BSCA related to stolen firearms. This interim final rule will help reduce the number of stolen firearms that licensees inadvertently place into their inventories by allowing licensees to obtain information from the NCIC Gun File to determine if a firearm offered for sale to the licensee has been reported as stolen. In addition, when a

licensee learns from the NCIC Gun File information indicating a weapon has been stolen, the licensee might report that information to a criminal justice agency. For these reasons, this interim final rule will assist criminal justice agencies in investigating reports of stolen firearms by providing potential investigative leads and will help to deter or halt the sale of stolen firearms through seemingly legitimate business transactions.

To help advance the purpose of section 12004(h) of the BSCA, the FBI is establishing three methods for licensees to access NCIC Gun File information. The first method involves partnering with a criminal justice agency. Among other things, NCIC policy authorizes criminal justice agencies to query the NCIC Gun File and provide a determination to the licensee regarding a firearm's status (*e.g.*, reported stolen). Prior to the BSCA's enactment in June 2022, dissemination of actual NCIC information was not authorized; an inquiring licensee could receive information that confirmed only the existence of an NCIC Gun File record (a "hit" or "no hit"). This "hit" or "no hit" information did not definitively indicate whether a gun was stolen. Under the Act and this rule, criminal justice agencies may now provide more information from the NCIC Gun File directly to licensees. In particular, they may provide the information that is "necessary to verify whether firearms offered for sale to such licensees have been stolen." Public Law 117–159, sec. 12004(h)(2); 28 U.S.C. 534(a)(5). Such information may include, among other information, the type and numeric identifiers of the firearm offered for sale. This partnering between the licensee and the criminal justice agency will allow the licensee to obtain the information needed to determine whether a firearm has been stolen.

Next, in connection with this rulemaking, the FBI is establishing a second method for accessing Gun File information. Specifically, the FBI is creating an extract of the NCIC Gun File and will make this data available to Criminal Justice Information Services ("CJIS") Systems Agencies for download into State systems that licensees can access. To ensure licensees receive only the information necessary to implement 28 U.S.C. 534(a), the extract's contents will be limited to NCIC Gun File information that, as previously indicated, relates only to whether the firearm may have been stolen. However, the specific method that a licensee uses to access the extract will depend upon the manner in which the State provides

the information. When this rule becomes effective, the FBI will furnish a notice to all CJIS Systems Officers to ensure licensees are notified of the new information that is available.

In developing this rule, the FBI sought advice and endorsement from its CJIS Advisory Policy Board ("APB"), which operates under the Federal Advisory Committee Act; doing so led to the identification of a third method for disseminating information from the NCIC Gun File concerning stolen gun records to licensees. In particular, in March 2023, the FBI submitted to the CJIS Working Groups,¹ which provide proposals to the CJIS APB and its Subcommittees, a proposal to authorize licensees to use the E-Check Portal of the National Instant Criminal Background Check System ("NICS") to access the NCIC Gun File.

All five Working Groups recommended pursuing all three methods described above: partnering with a criminal justice agency, the creation of the NCIC Gun File extract, and the NICS E-Check Portal method. In April 2023, the FBI submitted this same proposal to the NICS, Security and Access, and NCIC Subcommittees.² All three Subcommittees similarly recommended pursuing all three methods. In June 2023, this proposal was presented to the CJIS APB, which recommended to the FBI Director that all three methods be pursued. On December 5, 2023, the FBI Director approved the APB recommendations. FBI Director approval authorizes the FBI CJIS Division to create the necessary policies for implementing the APB recommendations.

In addition to information specific to a stolen firearm itself (such as type and numeric identifiers), licensees using any of the three methods will be provided information relating to the criminal justice agency that entered the record into the NCIC for purposes of law enforcement follow-up. Provision of this information is intended to ensure that all licensees can perform a direct search

¹ There are four Regional Working Groups, each of which includes State, Tribal, and local law enforcement representatives who review operational, policy, and technical issues related to CJIS programs and policies. See FBI, The CJIS Advisory Process, <https://le.fbi.gov/cjis-division/the-cjis-advisory-process> (last visited May 29, 2024). A Federal Working Group composed of representatives of Federal agencies and one Tribal representative chosen by the Department of the Interior also provides advice on CJIS programs and policies. *Id.*

² Subcommittees review proposed policy changes that may require specialized review or for some reason be controversial and consider possible alternatives to those policy changes. See FBI, The Advisory Process, <https://le.fbi.gov/cjis-division/the-cjis-advisory-process> (last visited May 29, 2024).

of stolen gun information using technologies existing between the NICS and NCIC. Doing so will enable a licensee, for example, to ensure the gun offered for sale to the licensee is the exact same gun for which information exists in the Gun File and to confirm with the relevant criminal justice agency that the Gun File information is still accurate. Through these methods, licensees will be able to receive a previously unavailable subset of NCIC Gun File information to ascertain the firearm's status while ensuring the appropriate privacy and information dissemination restrictions are observed.

III. Regulatory Certifications

A. Administrative Procedure Act

Pursuant to section 12004(h)(3) of the BSCA, the Department is not required to comply with chapter 5 of title 5 of the United States Code. However, the Department is, in its discretion, seeking post-promulgation public comment on this rulemaking.

B. Regulatory Flexibility Act

This interim final rule amends the Department's regulations, under 28 U.S.C. 534, to incorporate certain changes made by the BSCA. The FBI will be developing electronic solutions to disseminate NCIC records to the licensees. The FBI will provide these solutions to licensees at no cost, and the FBI will not charge a fee for this service. Because the Department is not required to publish a notice of proposed rulemaking for this interim final rule, a Regulatory Flexibility Analysis is not required. See 5 U.S.C. 603(a).

C. Executive Orders 12866, 13563, and 14094—Regulatory Review

This interim final rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b), and Executive Order 14094, "Modernizing Regulatory Review," section 2(a).

The Office of Management and Budget ("OMB") has determined that this interim final rule is a "significant regulatory action" under Executive Order 12866, section 3(f), as amended by Executive Order 14094. Accordingly, this interim final rule has been reviewed by OMB. Both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

As explained above, the five Working Groups, as well as the NICS, Security and Access, and NCIC Subcommittees, considered these regulations and the manner in which they will be implemented and concluded they represent an effective way for licensees to obtain the information encompassed by 28 U.S.C. 534(a)(5). In addition, the Department anticipates that providing this information will result in safety benefits that cannot be quantified but that are nonetheless significant. In light of these considerations, and after further assessment of the costs and benefits of this regulation, the Department believes that the regulatory approach it has selected maximizes net benefits.

D. Executive Order 13132—Federalism

This interim final rule 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. Therefore, in accordance with Executive Order 13132, “Federalism,” the Department has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988—Civil Justice Reform

This interim final rule meets the applicable standards set forth in sections 3(a) and 3(b) (2) of Executive Order 12988, “Civil Justice Reform.”

F. Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48; *see also* 2 U.S.C. 1532(a), 1533.

G. Congressional Review Act

This interim final rule is not a major rule as defined by section 804 of the legislation commonly known as the Congressional Review Act, Public Law

104–121, sec. 251, 110 Stat. 847, 868 (1996) (codified in relevant part at 5 U.S.C. 804). This action pertains to agency management or personnel, and agency organization, procedure, or practice, in that it specifies the circumstances in which the Department’s own personnel, in managing the NCIC, will make available certain information from the NCIC Gun File. Further, because licensees have discretion to choose whether to request such information, this rule does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a “rule” as that term is used by the Congressional Review Act, *see* 5 U.S.C. 804(3)(B), (C), and the reporting requirement of 5 U.S.C. 801 does not apply.

H. Paperwork Reduction Act

This interim final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

List of Subjects in 28 CFR Part 20

Crime, Intergovernmental relations, Law enforcement, Privacy.

Accordingly, for the reasons set forth in the preamble, part 20 of title 28 of the Code of Federal Regulations is amended as follows:

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

■ 1. The authority citation for part 20 is revised to read as follows:

Authority: 28 U.S.C. 534; Pub. L. 92–544, 86 Stat. 1115; 42 U.S.C. 3711 *et seq.*; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196; Pub. L. 101–515, as amended by Pub. L. 104–99, set out in the notes to 28 U.S.C. 534.; Pub. L. 117–159, 136 Stat. 1313, 1331.

■ 2. Revise § 20.2 to read as follows:

§ 20.2 Authority.

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Public Law 93–83, 87 Stat. 197, 42 U.S.C. 3701, *et seq.* (Act), 28 U.S.C. 534, Public Law 92–544, 86 Stat. 1115, and Public Law 117–159, 136 Stat. 1331

■ 3. In § 20.3:

a. Redesignate paragraphs (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), and (s), respectively, as paragraphs (i), (j), (k), (l), (m), (p), (r), (s), (t), (u), (w), and (x); and

■ b. Add paragraphs (h), (n), (o), (q), and (v).

The additions read as follows:

§ 20.3 Definitions.

* * * * *

(h) *Dealer* has the meaning set forth for that term in section 921(a)(11) of title 18, United States Code.

* * * * *

(n) *Firearm* has the meaning set forth for that term in section 921(a)(3) of title 18, United States Code.

(o) *Importer* has the meaning set forth for that term in section 921(a)(9) of title 18, United States Code.

* * * * *

(q) *Manufacturer* has the meaning set forth for that term in section 921(a)(10) of title 18, United States Code.

* * * * *

(v) For purposes of 28 CFR 20.33(e), *person* has the meaning set forth for that term in section 921(a)(1) of title 18, United States Code.

* * * * *

■ 4. Amend § 20.33 by adding paragraph (e), to read as follows:

§ 20.33 Dissemination of criminal history record information.

* * * * *

(e) NCIC Gun File records that are necessary to verify whether a firearm offered for sale to a licensed firearms importer, manufacturer, or dealer has been stolen may be made available to a person licensed as an importer, manufacturer, or dealer of firearms. Information disseminated to such licensees shall be limited solely to the purpose of verifying whether firearms offered for sale to licensees have been stolen.

■ 5. In the Appendix to part 20, subpart C, add an entry for § 20.33(e) to read as follows:

APPENDIX TO PART 20— COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

* * * * *

§ 20.33(e). The dissemination of NCIC records, pursuant to this paragraph, is limited solely to the purpose of verifying whether firearms offered for sale to licensees have been stolen. The dissemination of such NCIC records for other purposes is not authorized.

* * * * *

Dated: June 24, 2024.

Merrick B. Garland,
Attorney General.

[FR Doc. 2024–14253 Filed 6–28–24; 8:45 am]

BILLING CODE 4410–02–P

PENSION BENEFIT GUARANTY CORPORATION**29 CFR Part 4044****Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits**

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe the spreads component of the interest assumption under the asset allocation regulation for plans with valuation dates of July 31–October 30, 2024. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective July 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Gregory Katz, Deputy Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–3829. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including an interest assumption—for valuing benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumption is also posted on PBGC's website (www.pbgc.gov).

PBGC uses the interest assumption in § 4044.54 to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions in part 4044 of PBGC's regulations are also used in other situations where it is appropriate for liabilities to align with private sector group annuity prices. For example, PBGC's regulations on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219)

and Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) provide that these assumptions are used to value liabilities for purposes of determining withdrawn employers' reallocation liability in the event of a mass withdrawal from a multiemployer plan. Multiemployer plans that receive special financial assistance under the regulation on Special Financial Assistance by PBGC (29 CFR part 4262) must, as a condition of receiving special financial assistance, use the interest assumption to determine withdrawal liability for a prescribed period. Additionally, plan sponsors are required to use some, or all of these assumptions for specified purposes (e.g., reporting benefit liabilities in filings required under PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010) or determining certain amounts to transfer to PBGC's Missing Participants Program on behalf of a missing participant of a terminating defined benefit plan under PBGC's regulation on Missing Participants (29 CFR part 4050)) and may use them for other purposes (e.g., to ensure that plan spinoffs comply with section 414(l) of the Internal Revenue Code (the Code)).

On June 6, 2024, PBGC issued a final rule at 89 FR 48291 that changes the structure of the interest assumption for valuation dates on or after July 31, 2024, from the select and ultimate approach to a yield curve approach. As described in the June 6 final rule, this “4044 yield curve,” is based on a blend of two publicly available bond yield curves that is adjusted to the extent necessary so that the resulting liabilities align with group annuity prices. The adjustments are referred to as “spreads.” PBGC determines and publishes spreads quarterly based on survey data on pricing of private-sector group annuities. As noted in the preamble to the June 6 rule, PBGC will post the 4044 yield curve on its website at www.pbgc.gov each month shortly after its underlying data become available. In addition, practitioners are able to determine the 4044 yield curve as of the end of any month using the publicly available bond yield curves and the spreads specified in the regulation.

This rule amends the regulation to specify the spreads used to determine

the 4044 yield curve as of the last days of July, August, and September of 2024, (i.e., the “third quarter 2024 spreads”).

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the spreads component of the interest assumption in the asset allocation regulation so that the 4044 yield curve may be determined as soon as the underlying bond yield curves become available. These amendments are merely technical; they ensure that use of PBGC's interest assumption continues to yield liabilities in line with group annuity prices. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment, and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a “significant regulatory action” under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, PBGC amends 29 CFR part 4044 as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

- 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

- 2. In § 4044.54, revise table 1 to paragraph (e) to read as follows:

§ 4044.54 Interest assumptions.

* * * * *

(e) * * *

Table 1 to Paragraph (e)—Spreads

THIRD QUARTER 2024 SPREADS

Maturity point	Spread (percent)	Maturity point	Spread (percent)	Maturity point	Spread (percent)
0.5	0.38	10.5	0.36	20.5	0.33
1.0	0.38	11.0	0.36	21.0	0.33
1.5	0.37	11.5	0.36	21.5	0.33

THIRD QUARTER 2024 SPREADS—Continued

Maturity point	Spread (percent)	Maturity point	Spread (percent)	Maturity point	Spread (percent)
2.0	0.37	12.0	0.36	22.0	0.33
2.5	0.37	12.5	0.36	22.5	0.33
3.0	0.37	13.0	0.36	23.0	0.33
3.5	0.37	13.5	0.35	23.5	0.33
4.0	0.37	14.0	0.35	24.0	0.33
4.5	0.37	14.5	0.35	24.5	0.33
5.0	0.37	15.0	0.35	25.0	0.33
5.5	0.37	15.5	0.35	25.5	0.33
6.0	0.37	16.0	0.35	26.0	0.33
6.5	0.37	16.5	0.34	26.5	0.32
7.0	0.37	17.0	0.34	27.0	0.32
7.5	0.37	17.5	0.34	27.5	0.32
8.0	0.37	18.0	0.34	28.0	0.32
8.5	0.37	18.5	0.34	28.5	0.32
9.0	0.37	19.0	0.34	29.0	0.32
9.5	0.36	19.5	0.34	29.5	0.32
10.0	0.36	20.0	0.34	30.0	0.32

Issued in Washington, DC.
Hilary Duke,
*Assistant General Counsel for Regulatory
Affairs, Pension Benefit Guaranty
Corporation.*
[FR Doc. 2024–14401 Filed 6–28–24; 8:45 am]
BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND
SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0493]

RIN 1625–AA00

Safety Zone; Redwood City Fourth of
July Fireworks, Redwood Creek,
Redwood City, CA

AGENCY: Coast Guard, DHS.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Redwood Creek in Redwood City, CA in support of a fireworks display on July 4, 2024. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 9 a.m. until 10:20 p.m. on July 4, 2024.
ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to [https://](https://www.regulations.gov)

www.regulations.gov, type USCG–2024–0493 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Shannon Curtaz-Milian, U.S. Coast Guard Sector San Francisco, at 415–399–7440, SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

**II. Background Information and
Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event with sufficient time to issue a proposed rule. It is impracticable to go through the full notice and comment rule making process because the Coast Guard must establish this safety zone by July 4,

2024, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.
Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the fireworks display on Redwood Creek in Redwood City, CA on July 4, 2024.
III. Legal Authority and Need for Rule
The Coast Guard is issuing this rule under authority 46 U.S.C. 70034. The Captain of the Port San Francisco has determined that potential hazards associated with the Redwood City Fourth of July Fireworks on July 4, 2024, will be a safety concern for anyone within a 100-foot radius of the fireworks vessel during loading and staging, and anyone within a 850-foot radius of the fireworks vessel starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks vessel and during the fireworks display.
IV. Discussion of the Rule
This rule establishes a temporary safety zone from 9 a.m. on July 4, 2024, until 10:20 p.m. on July 4, 2024, during the loading, staging, and transit of the fireworks vessel in San Francisco Bay from Pier 68 to Redwood Creek,

Redwood City, CA, and until 30 minutes after completion of the fireworks display. During the loading, staging, and transit of the fireworks vessel, scheduled to take place between 9 a.m. on July 4, 2024, until 9 p.m. on July 4, 2024, until 30 minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by connection of all points 100 feet out from the fireworks vessel. The fireworks display is scheduled to start from 9:30 p.m. and end at approximately 9:50 p.m. on July 4, 2024, on Redwood Creek in Redwood City, CA.

The fireworks vessel will remain at Pier 68 until the start of its transit to the display location. Movement of the vessel from Pier 68 to the display location is scheduled to take place from 6:30 p.m. to 8 p.m. on July 4, 2024, where it will remain until the conclusion of the fireworks display.

At 9 p.m. on July 4, 2024, 30 minutes prior to the commencement of the 20-minute fireworks display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by all connecting points 850 feet from the circle center at approximate position 37°30'28.48" N–122°12'51.53" W (NAD 83). The safety zone will terminate at 10:20 p.m. on July 4, 2024.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the fireworks loading, staging, transit, and display site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. A "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone. This regulation is necessary to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast

Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters around the loading, staging, transit, and display of fireworks near Pier 50 in San Francisco Bay and on Redwood Creek in Redwood City. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T11–170 to read as follows:

§ 165.T11–170 Safety Zone; Redwood City Fourth of July Fireworks, Redwood Creek, Redwood City, CA.

(a) *Location.* The following area is a safety zone: all navigable waters of San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks vessel during loading and staging at Pier 68 in San Francisco, CA as well as transit and arrival to Redwood Creek, Redwood City, CA. Between 9 p.m. and 10:20 p.m. on July 4, 2024, the safety zone will expand to all navigable

waters, from surface to bottom, within a circle formed by connection all points 850 feet out from the fireworks vessel in approximate position 37°30′28.48″ N–122°12′51.53″ W (NAD 83) or as announced via Broadcast Notice to Mariners.

(b) *Definitions.* As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or Local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP’s designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from 9 a.m. until 10:20 p.m. on July 4, 2024.

(e) *Information broadcasts.* The COTP or the COTP’s designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Dated: June 25, 2024.

Jordan M. Balduenza,
Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2024–14357 Filed 6–28–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0548]

Safety Zone; Providence Fireworks, Providence, RI

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Providence Fireworks on July 2, 2024, to provide the safety of life on navigable waterways during this fireworks display. Our regulation for marine events within the First Coast Guard District identifies the regulated area for this event in Providence, RI. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations for the event 1.2 Providence Fireworks listed in Table to 33 CFR 165.173 will be enforced from 8:30 p.m. until 10 p.m. on July 2, 2024, or those same hours on July 3, 2024, in the case of inclement weather on July 2, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Christopher Matthews, Waterways Management Division, Sector Southeastern New England, U.S. Coast Guard; telephone 571–610–4969, email SENEWWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the Providence Fireworks regulated area in 33 CFR 165.173 from 8:30 p.m. to 10 p.m. on July 2, 2024, or those same hours on July 3, 2024, in the case of inclement weather on July 2, 2024. This action is being taken to provide for the safety of life on navigable waterways during this 1-day event. Our regulation for marine events within the First Coast Guard District, § 165.173, which specifies the location of the regulated area for the Providence Fireworks which encompasses portions of the Providence River. During the enforcement periods, as reflected in § 165.173, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide

notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

C. Prindle,

Captain, U.S. Coast Guard, Captain of the Port Sector Southeastern New England.

[FR Doc. 2024–14373 Filed 6–28–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0119]

RIN 1625–AA00

Safety Zone; Reoccurring Firework Displays Near Convention Center on the Mobile River; Mobile, AL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone for reoccurring firework displays on the Mobile River in the vicinity of the Arthur R. Outlaw Convention Center in Mobile, AL. The safety zone will be enforced only during the firework displays. Establishment of this safety zone is necessary to protect waterway users and vessels from potential hazards associated with these firework displays. This rulemaking will prohibit entry into the safety zone during the firework displays unless authorized by the Captain of the Port Mobile (COTP), or a COTP designated representative.

DATES: This rule is effective July 31, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0119 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Lawrence J. Schad, Waterways Management, Sector Mobile, U.S. Coast Guard; telephone 251–382–8653, email SectorMobileWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking

§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard receives numerous event applications for firework displays on the Mobile River, to be held in the vicinity of the Arthur R. Outlaw Convention Center in Mobile, AL. These displays are sponsored by multiple organizations and held sporadically throughout the year. Based on previous years, approximately five to ten displays are expected to be held on any given year. The purpose of this rule is to ensure the safety of vessels, participants, and waterways users within a 100-yard radius of the fireworks barge immediately before, during, and after scheduled events. In response, on March 14, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Reoccurring Firework Displays Near Convention Center on the Mobile River, Mobile, AL” (89 FR 18583). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to these fireworks displays. During the comment period that ended April 15, 2024, we received one comment which favored the establishment of the safety zone. The final rule is unchanged from that which we proposed in the NPRM.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Mobile Region (COTP) has determined that potential hazards associated with the fireworks to be used in these reoccurring firework displays will be a safety concern for anyone within a 100-yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published March 14, 2024, that was in favor of the rulemaking. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a reoccurring safety zone covering all navigable waters within a 100-yard radius of barge-based firework displays on the Mobile River. The safety zone will be subject to enforcement for approximately one hour when a barge-based fireworks display is scheduled to occur. No person will be allowed within

100 yards of the fireworks barges immediately before, during, and immediately after firework displays. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP, or a COTP designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time of day of the safety zone. Vessel traffic may be able to safely transit around this safety zone which will impact a small, designated area of the Mobile River for less than 1 hour during the evening for the duration of the firework display.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this

rule will not have a significant economic impact on any vessel owner or operator due to the limited duration this rule will be enforced.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone immediately before, during, and immediately after the firework displays which will prohibit entry within 100 yards of a barge in which the fireworks are being fired from on the Mobile River, located in the vicinity of the Arthur R. Outlaw Convention Center in Mobile, AL. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.834 to read as follows:

§ 165.834 Safety Zone; Reoccurring Firework Displays near Convention Center on the Mobile River, Mobile, AL.

(a) *Location.* The following area is a safety zone: All navigable waters on the Mobile River 100 yards in all directions from any barges holding fireworks immediately before, during, and immediately after firework displays. The barges will generally be located in the Mobile River in the vicinity of the Arthur R. Outlaw Convention Center.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Mobile.] (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Mobile (COTP) or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF CH–16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Notification.* COTP will use all appropriate means to notify the public in advance of an event of the enforcement of this safety zone either by publishing a Notice of Enforcement in the **Federal Register** or through the local Notice to Mariners and Broadcast Notice to Mariners. Such notifications will include the date and times of enforcement, along with any pre-determined conditions of entry. Firework barges will also have a sign on their port and starboard side labeled “FIREWORKS—STAY AWAY”. This sign will consist of a ten inch high by one and half inch wide red lettering on a white background.

(e) *Enforcement period.* This rule will be enforced anytime immediately before, during, and immediately after a barge is conducting firework displays on the Mobile River. The Coast Guard

anticipates that these safety zones will be enforced for a one hour duration for each display, between 7 p.m. and 1 a.m. The exact dates and times will be announced as described in paragraph (d) of this section.

Dated: June 24, 2024.

U.S. Mullins,

Captain, U.S. Coast Guard, Captain of the Port Sector Mobile.

[FR Doc. 2024–14374 Filed 6–28–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0492]

Safety Zone; Northern California and Lake Tahoe Area Annual Fireworks Events

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce numerous safety zones within the San Francisco Captain of the Port area of responsibility during the dates and times specified below. This action is necessary to protect personnel, vessels, and the marine environment from the hazards associated with the fireworks displays. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the regulated areas, unless authorized by the Patrol Commander (PATCOM) or an Official Patrol including any Federal, State, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

DATES: The regulations in 33 CFR 165.1191 will be enforced for the locations identified in Items 3, 4, 6, 7, 9, 10, 11, 12, 14, 16, 18, 19, and 31 of Table 1 to § 165.1191 during the dates and times identified in the

SUPPLEMENTARY INFORMATION section below.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Petty Officer First Class Shannon Curtaz-Milian, Waterways Management, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7440, email SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones established in 33 CFR 165.1191, Table 1 to § 165.1191, Item numbers 3, 4, 6, 7, 9, 10, 11, 12, 14, 16, 18, 19, and 31 during the dates, times, and locations indicated in the table below. The dates, times, and locations will also be published in the Local Notice to Mariners at least 10 days prior to the date of each event.

3. Fourth of July Fireworks, City of Eureka

Sponsor	City of Eureka, CA.
Event Description	Fireworks Display.
Date	July 4th.
Time	From 12:01 a.m. to 9:30 p.m. on July 4, 2024, the barge will load, transit, and stage at the display location. From 9:30 p.m. until approximately 11:15 p.m. on July 4, 2024, the safety zone will encompass all navigable waters within a 1,000-foot radius of the fireworks barge.
Location	Humboldt Bay, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the fireworks display.

4. Fourth of July Fireworks, Crescent City

Sponsor	Crescent City, CA.
Event Description	Fireworks Display.
Date	July 4th.
Time	From 9:30 p.m. until approximately 10:35 p.m. on July 4, 2024.
Location	Crescent City Harbor, Crescent City, CA.
Regulated Area	Crescent City Harbor in the navigable waters within a 700-foot radius of the launch platform located on the West Jetty.

7. San Francisco Independence Day Fireworks

Sponsor	The City of San Francisco.
Event Description	Fireworks Display.
Date	July 4th.
Time	From 12:01 a.m. to 9 p.m. on July 4, 2024, the barges will load, transit, and stage at the display location. From 9 p.m. until approximately 10:20 p.m. on July 4, 2024, the safety zone will encompass all navigable waters within a 1,000-foot radius of the fireworks barges.
Location 1	A barge located approximately 1,000 feet off San Francisco Pier 39.
Location 2	A barge located approximately 700 feet off of the San Francisco Municipal Pier at Aquatic Park.
Regulated Area	100-foot radius around each fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.

9. Fourth of July Fireworks, City of Richmond

Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	A barge located in the Richmond Harbor in Richmond, CA.
Time	From noon on July 3, 2024, to 8:45 p.m. on July 3, 2024, the barge will load, transit, and stage at the display location. From 8:45 p.m. until approximately 10:05 p.m. on July 3, 2024, the safety zone will encompass all navigable waters within a 560-foot radius of the fireworks barge.

Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 560-foot radius upon commencement of the fireworks display.

10. Fourth of July Fireworks, City of Sausalito

Sponsor	City of Sausalito.
Event Description	Fireworks Display.
Date	July 4th.
Time	From 9 a.m. on July 4, 2024, to 9 p.m. on July 4, 2024, the barge will load, transit, and stage at the display location. From 9 p.m. until approximately 10:15 p.m. on July 4, 2024, the safety zone will encompass all navigable waters within a 1,000-foot radius of the fireworks barge.
Location	1,000 feet offshore from Sausalito, CA waterfront, north of Spinnaker Restaurant.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the fireworks display.

11. Fourth of July Fireworks, City of Martinez

Sponsor	City of Martinez.
Event Description	Fireworks Display.
Date	July 4th.
Time	From 9:30 p.m. until approximately 9:55 p.m. on July 4, 2024.
Location	Carquinez Strait, CA.
Regulated Area	The area of navigable waters within a 560-foot radius of the launch platform located near Waterfront Park.

12. Fourth of July Fireworks, City of Antioch

Sponsor	City of Antioch.
Event Description	Fireworks Display.
Date	July 4th.
Time	From 9:30 a.m. to 9 p.m. on July 4, 2024, the barge will load, transit, and stage at the display location. From 9 p.m. until approximately 10:20 p.m. on July 4, 2024, the safety zone will encompass all navigable waters within a 1,000-foot radius of the fireworks barge.
Location	San Joaquin River, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the moving fireworks display.

14. Delta Independence Day Celebration Fireworks

Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Time	From 8 a.m. on July 4, 2024, until 9 p.m. on July 4, 2024, the barge will load, transit, and stage at the display location. From 9 p.m. until approximately 10:20 p.m. on July 3, 2024, the safety zone will encompass all navigable waters within a 1,000-foot radius of the fireworks barge.
Location	San Joaquin River, near Mandeville Island, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the fireworks display.

16. Fourth of July Fireworks, Glenbrook NV

Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	July 4th.
Time	From 10 a.m. to 8:30 p.m. on July 4, 2024, the barge will load, transit, and stage at the display location. From 8:30 p.m. until approximately 9:50 p.m. on July 4, 2024, the safety zone will encompass all navigable waters within a 1,000-foot radius of the fireworks barge.
Location	Off-shore Glenbrook Beach, NV.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the fireworks display.

18. Lights on the Lake Fourth of July Fireworks, South Lake Tahoe, CA

Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Time	From 7 a.m. on July 1, 2024, till 9:15 p.m. on July 4, 2024, the barges will load, transit, and stage at the display location. From 9:15 p.m. until approximately 10:35 p.m. on July 4, 2024, the safety zone will encompass all navigable waters within a 1,000-foot radius of the fireworks barges.
Location	Off South Lake Tahoe, CA near the NV Border.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the fireworks display.

19. Red, White, and Tahoe Blue Fireworks, Incline Village, NV

Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Time	From 9 a.m. on June 30, 2024, till 8:30 p.m. on July 4, 2024, the barges will load, transit, and stage at the display location. From 8:30 p.m. until approximately 9:55 p.m. on July 4, 2024, the safety zone will encompass all navigable waters within a 1,000-foot radius of the fireworks barges.
Location	500 to 1,000 feet off Incline Village, NV in Crystal Bay.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1,000-foot radius upon commencement of the fireworks display.

31. Benicia Fourth of July Fireworks

Sponsor	City of Benicia, CA.
Event Description	Fireworks Display.
Date	July 4th.
Time	From 9:30 p.m. until approximately 9:50 p.m. on July 4, 2024.
Location	Carquinez Strait, Benicia, CA.
Regulated Area	1,000-foot radius around the fireworks launch site located on the Benicia First Street Pier.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from anchoring, blocking, loitering, or impeding the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol, defined as a Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the safety zone. During the enforcement periods, if you are the operator of a vessel in one of the safety zones, you must comply directions from the Patrol Commander or other Official Patrol. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 25, 2024.

Jordan M. Baldueza,
Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2024-14358 Filed 6-28-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG-2024-0522]

Safety Zone; LaPointe Fireworks, LaPointe, WI

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the LaPointe Fireworks in LaPointe, WI from 9:30 p.m. through 10:30 p.m. on July 4, 2024. This action is necessary to protect participants and spectators during the LaPointe Fireworks taking place at 46°46'40" N, 090°47'22" W in the North Channel off LaPointe. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or designated on-scene representative.

DATES: The regulations in 33 CFR 165.943(b) will be enforced from 9:30 p.m. through 10:30 p.m. on July 04, 2024, for the LaPointe Fireworks safety zone, § 165.943(a).

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email MST1 Corbin Spies, telephone (218) 725-3818, email DuluthWWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the annual LaPointe Fireworks in 33 CFR 165.943(a) from 9:30 p.m. through 10:30 p.m. on July 4, 2024, on all waters of Lake Superior bounded by the arc of a circle with a 1,120-foot radius from

the fireworks launch site with its center in position 46°46'40" N, 090°47'22" W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners.

Dated: June 25, 2024.

S.V. Murphy,
Lieutenant Commander, U.S. Coast Guard, Acting, Captain of the Port Duluth.

[FR Doc. 2024-14433 Filed 6-28-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG-2024-0545]

Safety Zone; Fall River Fireworks Display, Fall River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Fall River Fireworks Display on July 4, 2024, to provide for the safety of life on navigable waterways during this firework display. Our regulation for marine events within the First Coast Guard District identifies the regulated

area for this event in Fall River, MA. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation for the event 1.3 Fall River Fireworks listed in Table to 33 CFR 165.173 will be enforced from 9 p.m. until 11 p.m. on July 4, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST3 Nicholas Easley, Waterways Management Division, Sector Southeastern New England, U.S. Coast Guard; telephone 206-827-4160, email SENEWWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the Fall River Fireworks Display regulated area in 33 CFR 165.173 from 9 p.m. to 11 p.m. on July 4, 2024. This action is being taken to provide for the safety of life on navigable waterways during this 1-day event. Our regulation for marine events within the First Coast Guard District, § 165.173, specifies the location of the regulated area for the Fall River Fireworks Display, which is in the vicinity of Battleship Cove, Fall River, MA. During the enforcement periods, as reflected in § 165.173, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

C. Prindle,

Captain, U.S. Coast Guard, Captain of the Port Sector Southeastern New England.

[FR Doc. 2024-14376 Filed 6-28-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0546]

RIN 1625-AA00

Safety Zone; Laguna Madre, South Padre Island, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

certain navigable waters in the Laguna Madre. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a firework display launched from a barge in the Laguna Madre, South Padre Island, Texas. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Corpus Christi or a designated representative.

DATES: This rule is effective without notice from July 1, 2024, through August 30, 2024. It will be subject to enforcement from the hours of 9:30 p.m. through 11:59 p.m. each of the following dates: June 25, 28; July 2, 5, 9, 12, 16, 19, 23, 26, 30; and August 2, 6, 9, 16, 23, 30, but that enforcement schedule is subject to change. For the purposes of enforcement, actual notice will be used from June 25, 2024, until July 1, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-0546 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361-939-5130, email CCWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone as soon as possible to

protect personnel, vessels, and the marine environment from potential hazards created by the fireworks displays occurring daily now.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with fireworks launched from a barge in the waters of the Laguna Madre.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with a fireworks display will be a safety concern for anyone within a 700-yard radius from a stationary barge from which the fireworks will be launched. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while the display of the fireworks takes place in the Laguna Madre.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from June 25, 2024, until August 30, 2024. The safety zone will be subject to enforcement from the hours of 9:30 p.m. through 11:59 p.m. each day it is in effect. It is anticipated that fireworks will only take place each of the following nights: June 25, 28; July 2, 5, 9, 12, 16, 19, 23, 26, 30; and August 2, 6, 9, 16, 23, 30, but that schedule is subject to change. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate. The safety zone will encompass certain navigable waters of the Laguna Madre and is defined by a 700-yard radius around the launching platform. The regulated area encompasses a 700-yard radius from the following point; 26°6′02.1″ N, 97°10′17.7″ W. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF-FM (156.8 MHz) or by telephone at 361-939-0450.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and

Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. It is anticipated that the temporary safety zone will only be subject to enforcement for a short period (2.5 hours) on each of the following nights: on June 25, 28; July 2, 5, 9, 12, 16, 19, 23, 26, 30; and August 2, 6, 9, 16, 23, 30. The zone is limited to a 700-yard radius of the launching position in the navigable waters of the Laguna Madre. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

B. Impact on Small Entities

Because the Coast Guard has determined that this temporary final rule is exempt from notice and comment rulemaking requirements, the provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this action.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f) and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of the Laguna Madre in a zone defined by a 700-yard radius from the following coordinate: 26°6′02.1″ N, 97°10′17.7″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by fireworks display in the waters of the Laguna Madre. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protestors. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T08–0546 to read as follows:

§ 165.T08–0546 Safety Zone; Laguna Madre, South Padre Island, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Laguna Madre encompassed by a 700-yard radius from the following point; 26°6′02.1″ N, 97°10′17.7″ W.

(b) *Effective period.* This section is effective from June 25, 2024, to August 30, 2024. It will be subject to enforcement from 9:30 p.m. through 11:59 p.m. each night, on June 25, 28; July 2, 5, 9, 12, 16, 19, 23, 26, 30 and August 2, 6, 9, 16, 23, 30, although the dates it is subject to enforcement may change.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into the temporary safety zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: June 24, 2024.

David C. Barata,

Commander, RADM, U.S. Coast Guard, Eighth Coast Guard District.

[FR Doc. 2024–14317 Filed 6–28–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2020-0098; FRL-12019-01-R8]

Air Plan Approval; State of Utah; Utah State Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Utah on April 19, 2018; May 21, 2020; and July 21, 2020. These SIP submissions include revisions to air quality rules within Utah Administrative Code (UAC) title R307. EPA is taking this action pursuant to the Clean Air Act (CAA or the Act). **DATES:** This rule is effective on July 31, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2020-0098. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number: (303) 312-6602, email address: ostigaard.crystal@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means EPA.

I. Background

The background and legal basis for this action are discussed in detail in our November 6, 2020 proposal (85 FR 71023).¹ We proposed to approve the

Governor of Utah’s submittal of May 21, 2020, including revisions to UAC R307-110-32 (which incorporates by reference Utah SIP section X.B., the vehicle inspection and maintenance (I/M) program for Davis County) and R307-110-35 (which incorporates by reference Utah SIP section X.E., the vehicle I/M program for Weber County).

Additionally, we proposed to approve SIP revisions and new rules submitted by the Utah Division of Air Quality (UDAQ) on April 19, 2018, May 21, 2020, and July 21, 2020, specifically UAC R307-208, R307-230, R307-304, R307-335, R307-343, R307-344, R307-345, R307-346, R307-347, R307-348, R307-349, R307-350, R307-351, R307-352, R307-353, R307-354 and R307-355.

II. Response to Comments

Our proposed rulemaking provided notice of a 30-day public comment period. On November 10, 2020, Utah Physicians for a Healthy Environment submitted a request to extend the comment period by thirty days and for EPA to grant a formal, online hearing. EPA reviewed this request but denied it, maintaining the original December 7, 2020, comment deadline and declining to hold the requested hearing.² EPA received no comments specific to these four submittals.

III. Final Action

We are approving the submittal of May 21, 2020, with revisions to R307-110-32, R307-110-35 (including the incorporated-by-reference revisions to Utah SIP Sections X.B. and X.E., which are the I/M programs for Davis and Weber Counties), but we are not acting on appendix D (Diesel Inspection Procedures) or appendix F (Diesel Fueled Vehicle Test Procedure) of Utah SIP sections X.B. and X.E., respectively.³ The diesel inspection and

nitrogen oxides (NO_x) and volatile organic compounds (VOC); each maintenance plan’s budget trading mechanisms related to emissions of PM_{2.5} precursors; UT SIP sections IX.H.11, 12, and 13; R307-110-10; R307-110-17; and each nonattainment area’s (NAA) full best available control measure/best available control technology (BACM/BACT) determinations for major stationary sources, area sources, and on-road and off-road mobile sources. We are not taking final action on any of these proposed submissions within this action but will be addressing them in one or more future actions.

² Located within the docket, titled “11-10-2020 public comment—Dr. Moench_EPA Response.”

³ General information on diesel vehicles in I/M Programs: <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-inspection-and-maintenance-im-information-state>; February 1995, EPA-AA-EPSP-IM-94-1226, EPA I/M Briefing Book—Everything You Ever Wanted to Know About Inspection and Maintenance (pg. 146-147); April 3, 1997, Guidance to States on In-Use Smoke Test

testing procedures in these two appendices are not required submissions under CAA section 110(c) or required plan items under CAA section 179, and EPA has not promulgated criteria for evaluating them in 40 CFR part 51, subpart S. Further, there is a lack of correlation between opacity and particulate matter (PM) mass emissions in diesel vehicles, and relevant literature and studies suggest that adjusting diesel vehicles to reduce the opacity of emissions may result in an increase in emissions of NO_x, which is a precursor to the formation of PM_{2.5}.⁴

EPA is also approving Utah UAC sections R307-200 and R307-300 revisions and new rules submitted by UDAQ on April 19, 2018, May 21, 2020, and July 21, 2020, which strengthen the SIP. These rules are R307-208, R307-230, R307-304, R307-335, R307-343, R307-344, R307-345, R307-346, R307-347, R307-348, R307-349, R307-350, R307-351, R307-352, R307-353, R307-354 and R307-355.

The revisions being approved in this final action clarify several area source rules, including reorganizing provisions related to work practices and recordkeeping, and make other general administrative updates. In this final rule we are not determining that any rule satisfies BACM requirements for the Serious PM_{2.5} nonattainment areas (NAAs), nor are we reconsidering the substantive approvability under the CAA of provisions that have been previously approved into the SIP.

IV. Environmental Justice Considerations

EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the Salt Lake City and Provo PM_{2.5} NAAs.⁵ EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within the Salt Lake City PM_{2.5} NAA, the percentage of the population consisting of people of color is less than the national average (25% vs. 40%). For populations within the

Procedure for Highway Heavy-Duty Diesel Vehicles; and February 25, 1999, Guidance to States on Smoke Opacity Cutpoints to be used with the SAE J1667 In-Use Smoke Test Procedures.

⁴ McCormick, R.; Graboski, M.; Alleman, T.; Alvarez, J.; *Environ. Sci. Technol.* 2003, 37, 630-637.

⁵ The Salt Lake City and Provo PM_{2.5} NAA boundaries can be found at: <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-81/subpart-C/section-81.345>, within the Utah—2006 24-Hour PM_{2.5} NAAQS table.

¹ The November 6, 2020 (85 FR 71023) proposed rule also contained our proposed approvals of the Salt Lake City and Provo Serious PM_{2.5} redesignation requests; maintenance plans; the maintenance plans’ 2035 motor vehicle emissions budgets (MVEB) for emissions of direct PM_{2.5},

Provo PM_{2.5} NAA, the results of the demographic analysis indicate that the percentage of the population consisting of people of color is less than the national average (18% vs. 40%). The percentage of people living below the poverty level in the Salt Lake City PM_{2.5} NAA is lower than the national average (23% vs. 30%). For the Provo PM_{2.5} NAA, the percentage of people living below the poverty level is lower than the national average (27% vs. 30%).

This final action approves state rules and rule revisions into the SIP and will establish federally enforceable requirements that will reduce emissions of PM_{2.5} and PM_{2.5} precursors. We expect that this action and the resulting emissions reductions will be neutral or will contribute to reduced environmental and health impacts on all populations in the NAAs, including people of color and low-income populations in the Salt Lake City and Provo PM_{2.5} NAAs. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this document, EPA is taking final action to approve regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is taking final action to approve the incorporation by reference of: R307–110–32; R307–110–35; R307–208; R307–230; R307–304; R307–335; R307–343; R307–344; R307–345; R307–346; R307–347; R307–348; R307–349; R307–350; R307–351; R307–352; R307–353; R307–354; R307–355; Utah SIP section X.B., excluding appendix D; and Utah SIP section X.E., excluding appendix F, as discussed in section III. of this preamble. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁶

VI. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

Finally, Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994)

directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Consistent with EPA's discretion under the CAA, EPA has evaluated the environmental justice considerations of this action, as is described above in the section titled, “Environmental Justice Considerations.” Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2024. Filing a petition for reconsideration by

⁶ See 62 FR 27968 (May 22, 1997).

the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 17, 2024.

KC Becker,

Regional Administrator, Region 8.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart TT—Utah

- 2. In § 52.2320:
- a. In the table in paragraph (c):
- i. Revise the entries “R307–110–32” and “R307–110–35”;
- ii. Add the center heading “R307–208. Outdoor Wood Boilers” and the entry “R307–208” in numerical order;
- iii. Add the center heading “R307–230. NO_x Emission Limits for Natural

Gas-Fired Water Heaters” and the entry “R307–230” in numerical order;

- iv. Add the center heading “R307–304. Solvent Cleaning” and the entry “R307–304” in numerical order;

■ v. Revise the center heading “R307–335. Degreasing and Solvent Cleaning Operations” to read “R307–335. Degreasing” and the entry “R307–335”; and

- vi. Revise the entries “R307–343”, “R307–344”, “R307–345”, “R307–346”, “R307–347”, “R307–348”, “R307–349”, “R307–350”, “R307–351”, “R307–352”, “R307–353”, “R307–354”, and “R307–355”.

- b. In the table in paragraph (e):

- i. Revise the entries “Section X.B. Davis County” and “Section X.E. Weber County”.

The revisions and additions read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
* * *				
R307–110. General Requirements: State Implementation Plan				
* * *				
R307–110–32	Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.	3/4/2020	[insert Federal Register citation], 7/1/2024.	Excluding appendix D.
* * *				
R307–110–35	Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.	3/4/2020	[insert Federal Register citation], 7/1/2024.	Excluding appendix F.
* * *				
R307–208. Outdoor Wood Boilers				
R307–208	Outdoor Wood Boilers	4/10/2013	[insert Federal Register citation], 7/1/2024.	
* * *				
R307–230. NO_x Emission Limits for Natural Gas-Fired Water Heaters				
R307–230	NO _x Emission Limits for Natural Gas-Fired Water Heaters.	4/3/2017	[insert Federal Register citation], 7/1/2024.	
* * *				
R307–304. Solvent Cleaning				
R307–304	Solvent Cleaning	12/6/2017	[insert Federal Register citation], 7/1/2024.	
* * *				
R307–335. Degreasing				
R307–335	Degreasing	10/29/2017	[insert Federal Register citation], 7/1/2024.	

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
*	*	*	*	*
R307–343. Emissions Standards for Wood Furniture Manufacturing Operations				
R307–343	Emissions Standards for Wood Furniture Manufacturing Operations.	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–344. Paper, Film, & Foil Coatings				
R307–344	Paper, Film, & Foil Coatings	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–345. Fabric & Vinyl Coatings				
R307–345	Fabric & Vinyl Coatings	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–346. Metal Furniture Surface Coatings				
R307–346	Metal Furniture Surface Coatings	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–347. Large Appliance Surface Coatings				
R307–347	Large Appliance Surface Coatings	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–348. Magnet Wire Coatings				
R307–348	Magnet Wire Coatings	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–349. Flat Wood Panel Coatings				
R307–349	Flat Wood Panel Coatings	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–350. Miscellaneous Metal Parts & Products Coatings				
R307–350	Miscellaneous Metal Parts & Products Coatings ...	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–351. Graphic Arts				
R307–351	Graphic Arts	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–352. Metal Container, Closure & Coatings				
R307–352	Metal Container, Closure & Coatings	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–353. Plastic Parts Coatings				
R307–353	Plastic Parts Coatings	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–354. Automotive Refinishing Coatings				
R307–354	Automotive Refinishing Coatings	12/6/2017	[insert Federal Register citation], 7/1/2024.	
R307–355. Control of Emissions from Aerospace Manufacture & Rework Facilities				
R307–355	Control of Emissions from Aerospace Manufacture & Rework Facilities.	12/6/2017	[insert Federal Register citation], 7/1/2024.	
*	*	*	*	*

Rule title	State effective date	Final rule citation, date	Comments
*	*	*	*
X. Vehicle Inspection and Maintenance Program			
*	*	*	*
Section X.B. Davis County	3/4/2020	[insert Federal Register citation], 7/1/2024.	*
*	*	*	*
Section X.E. Weber County	3/4/2020	[insert Federal Register citation], 7/1/2024.	*
*	*	*	*

[FR Doc. 2024–14136 Filed 6–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA–R07–OAR–2024–0130; FRL–11827–02–R7]****Air Plan Approval; Iowa; Linn County Ordinances****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Iowa State Implementation Plan (SIP) to include recent changes to the Linn County Code of Ordinances. The revisions to this rule include updating definitions and references to federal rules, revising methods and procedures for performance test/stack test and continuous monitoring systems, and making minor clarifications and grammatical changes. These revisions do not impact the stringency of the SIP or have an adverse effect on air quality. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on July 31, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2024–0130. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT:

Bethany Olson, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7905; email address: olson.bethany@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to EPA.

Table of Contents

- I. What is being addressed in this document?
- II. Have the requirements for approval of a SIP revision been met?
- III. What action is the EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The EPA is approving revisions to the Iowa SIP received on October 17, 2022. The state withdrew certain provisions of the request on February 7, 2024. The revisions are to Linn County Code of Ordinances Chapter 10, Article III “Air Quality”. The CAA allows authorized states to delegate portions of the Act's implementation and enforcement to local governments such as Linn County. The revisions to the Iowa SIP incorporate updated definitions and references to federal rules, revised methods and procedures for performance test/stack test and continuous monitoring systems, and minor clarifications and grammatical changes.

EPA finds that these revisions meet the requirements of the CAA, do not impact the stringency of the SIP, and do not adversely impact air quality. The full text of the rule revisions as well as EPA's analysis of the revisions can be found in the technical support

document (TSD) included in this docket.

II. Have the requirements for approval of a SIP revision been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. Linn County provided public notice on this SIP revision from April 1, 2022, to May 2, 2022, and received no comments. The EPA's Notice of Proposed Rulemaking and supporting information contained in the docket were made available for public comment from April 18, 2024, to May 20, 2024. The EPA received no comments. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is the EPA taking?

The EPA is taking final action to amend the Iowa SIP by approving the State's request to revise Linn County Code of Ordinances, Chapter 10.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Linn County Air Quality Ordinance, Chapter 10, with an effective date of May 14, 2022, which regulates air quality in Linn County. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews

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

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

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

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

The Iowa Department of Natural Resources did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ

analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

List of Subjects in 40 CFR Part 52

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

Dated: June 20, 2024.

Meghan A. McCollister,
Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Q—Iowa

- 2. In § 52.820, the table in paragraph (c) is amended by revising the entry “Chapter 10” under the heading “Linn County” to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

¹ 62 FR 27968, May 22, 1997.

EPA-APPROVED IOWA REGULATIONS					
Iowa citation	Title	State effective date	EPA approval date	Explanation	
Iowa Department of Natural Resources Environmental Protection Commission [567]					
*	*	*	*	*	*
Linn County					
Chapter 10	Linn County Air Quality Ordinance, Chapter 10.	5/14/2022	7/1/2024, [insert Federal Register citation].	The following definitions are not SIP-approved in Chapter 10–55; Anaerobic lagoon, Biomass, Chemical processing plants (ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140 are not included in this definition); Greenhouse gases; The following sections are not SIP approved: 10–57(a), Title V Permits; 10–59(c), Fees Associated with PSD Applications; 10–61, Emissions From Fuel-Burning Equipment, (b)(2); 10–61, Emissions From Fuel-Burning Equipment, (c) Exemptions for Residential Heaters Burning Solid Fuels; 10–61, Emissions from Fuel-Burning Equipment, (d) Nuisance Conditions for Fuel Burning Equipment; 10–62, Emission Standards,(b) NSPS; 10–62(c), Emission Standards for HAPs; 10–62(d), Emission Standards for HAPs for Source Categories; 10–63, Open Burning, (a)(3)e.3. Variance from Rules; 10–64, Emission of Objectionable Odors; 10–68, Variances; 10–70, Testing and Sampling of New and Existing Equipment, (k) Continuous Emissions Monitoring from Acid Rain Program; and 10–77, Penalty.	
*	*	*	*	*	*

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[FR Doc. 2024–14119 Filed 6–28–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

[BLM_HQ_FRN_MO4500178302]

RIN 1004–AE98

Required Fees for Mining Claims or Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing this final rule to make statutorily required adjustments to its location and maintenance fees for unpatented mining claims, mill sites, and tunnel sites. These adjustments reflect changes in the Consumer Price Index (CPI), which is published by the Bureau of Labor Statistics.

DATES: The final rule is effective July 1, 2024.

ADDRESSES:
Mail: Director, Bureau of Land Management, U.S. Department of the Interior, 1849 C St. NW, Washington, DC 20240, Attention: “RIN 1004–AE98”.

Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 1849 C St. NW, Washington, DC 20240, Attention: Regulatory Affairs.

FOR FURTHER INFORMATION CONTACT: John Grasso at (303) 239–3777 in the Solid Minerals Group as to program matters or the substance of the final rule, or Stephen Pollard in the Division of Regulatory Affairs at (202) 993–2596 for information relating to the rulemaking process generally. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion of the Administrative Final Rule

III. Procedural Matters

I. Background

The Mining Law of 1872 allows individuals and corporations to stake (or “locate”) mining claims on certain Federal land. Originally, annual assessment work and related filings were required by statute in order to maintain an unpatented mining claim or site. 30 U.S.C. 28–28e; 43 U.S.C. 1744(a) and (c).

Beginning in fiscal year 1993, mining claimants have been required to pay an annual fee in lieu of performing annual

assessment work and making annual filings. Mining claimants locating new claims or sites must pay an initial “maintenance” fee for the assessment year in which the mining claim was located and also pay a one-time location fee. *See* 30 U.S.C. 28f–28l.

This rule implements 30 U.S.C. 28j(c), which requires adjustments to the location and maintenance fees “to reflect changes in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics (BLS) of the Department of Labor every 5 years after August 10, 1993, or more frequently if the Secretary determines an adjustment to be reasonable.” Section 28j(c) also requires that mining claimants be provided “notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made” and that any fee adjustment “shall begin to apply the first assessment year which begins after adjustment is made.”

As enacted in 1993, the one-time location fee was \$25, and the annual maintenance fee was \$100 per mining claim or site. In 2004, the BLM increased the amount of the location and maintenance fees to \$30 and \$125 respectively, based on the change in the CPI from September 1, 1993, to December 31, 2003 (69 FR 40294 (July 1, 2004)). In 2009, the BLM increased the amount of the location and maintenance fees to \$34 and \$140,

respectively, based on the change in the CPI from December 31, 2003, to December 31, 2008 (74 FR 30959). On July 27, 2012, the BLM issued a rule (77 FR 44155) that also amended 43 CFR 3830.21, based on a law that changed the way the maintenance fee is calculated for unpatented placer mining claims. Then in 2014, the BLM increased the amount of the location fee to \$37 and increased the maintenance fee to \$155 for lode mining claims or sites and \$155 for each 20 acres or portion thereof for placer mining claims, based on the change in the CPI from December 31, 2008, to December 31, 2013 (79 FR 36662). In 2019, the BLM increased the amount of the location fee to \$40 and increased the maintenance fee to \$165 for lode mining claims or sites and \$165 for each 20 acres or portion thereof for placer mining claims, based on the change in the CPI from December 31, 2014, to December 31, 2019 (84 FR 31219).

The adjustments made in this rule are based upon the change in the CPI from December 31, 2018, to December 31, 2023, as reported by the BLS in the “CPI Databases” (<https://www.bls.gov/cpi/data.htm>). The particular series used for this update is the “All Urban Consumers (Current Series) (Consumer Price Index—CPI—U).”

The calculated change is 22.1 percent from December 31, 2018, through December 31, 2023. A calculated value for the fees was obtained by inflating the location and maintenance fees established in the 2019 rulemaking by 22.1 percent. The new location fee is \$49, and the new maintenance fee is \$200 per lode mining claim or site and \$200 for each 20 acres or portion thereof for placer mining claims. The new location fee is based on rounding the calculated value to the nearest \$1. The maintenance fee is based on rounding the calculated value to the nearest \$5.

Mining claimants must pay the new location fee and maintenance fee for any mining claim or site located on or after September 1, 2024. Mining claimants must pay the new maintenance fee to maintain existing mining claims and sites beginning with the 2025 maintenance year. The maintenance fee is due on or before September 1, 2024. Under 43 CFR 3834.23(d), mining claimants who have already submitted maintenance fees for the 2025 assessment year, and those who timely pay the 2025 assessment year maintenance fee based on the fee in effect immediately before the adjustment was made, will be given an opportunity to pay the additional amount without penalty upon notice from the BLM. The BLM will also give

claimants the opportunity to cure deficient maintenance and location fee payments for new claims or sites located on or after September 1, 2024, and timely received on or before December 31, 2024.

II. Discussion of the Administrative Final Rule

Why the Rule Is Being Published on a Final Basis

The BLM is adopting this final rule solely to adjust the location and maintenance fee amounts in § 3830.21. The BLM for good cause finds under 5 U.S.C. 553(b)(3)(B) that notice and an opportunity for public comment for this rule are unnecessary and that this rule may properly take effect upon publication. The reason is that this rule implements a statutory requirement to adjust the location and annual maintenance fees at least every 5 years, and the last adjustment was made in 2019. The statute specifies the method of calculating the fee adjustments and prescribes the form and manner of notice of the fee adjustment, and the BLM has no discretion in implementing the statute. The BLM also determines under 5 U.S.C. 553(d) that there is good cause to place the rule into effect on the date of publication, because the adjustments made in the rule are explicitly authorized by statute.

Organization of the Final Rule

This final rule contains only the specific amendments necessary to conform to the requirements of the statute. The amendments appear as modifications of the fee transaction table at 43 CFR 3830.21 to change the amount of the location and annual maintenance fees required to be paid for each lode mining claim, mill site, or tunnel site and for each 20 acres or portion thereof for a placer mining claim.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. This rule is not significant and OIRA will not formally review it because it does not meet one or more of the criteria for significance as follows:

(a) This rule will not have an effect of \$200 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The rule increases the maintenance and location fees as provided for by statute. We estimate that the rule will likely result in a small increase in transfer payments from mining claimants to the Federal Government. The fee adjustment does not change the substance of current mining claim administration within the BLM. The total amount of fees to be collected, including the effects of the adjustment, is estimated to be \$124 million annually, of which approximately \$22.2 million will be attributable to the adjustments made in this rule.

(b) This rule will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. The rule affects only the BLM's administration of its minerals program and does not change the relationships of the BLM to other agencies and their actions.

(c) This rule does not change the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(d) This rule does not raise novel legal or policy issues. It merely updates the maintenance and location fees that BLM assesses.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. This rule has been developed in a manner consistent with these requirements.

Regulatory Flexibility Act

The rule would affect business entities across many industries. The BLM reviewed the potentially affected entities and determined the industries to which they identify. The BLM also evaluated the extent to which the rule would affect entities that are small businesses, as defined by the Small Business Administration (SBA). See the Economic and Threshold Analysis for this rule for a discussion of SBA size standards.

The entities potentially affected by the rule locate mining claims or sites

and may be actively involved in the exploration and development of locatable minerals on Federal lands. These entities are defined by the SBA as an individual, limited partnership, or small company considered being at “arm’s length” from the control of any parent companies. The BLM does not have the authority to collect information concerning the number of employees, whether for companies locating mining claims or sites, or for companies actively involved in the exploration and development of locatable minerals on Federal lands. However, by reviewing U.S. Census Bureau data on entities involved in the development of locatable type minerals, we can make a reasonable conclusion about the extent to which the rule will affect small business as defined by the SBA.

Based on statistics from the U.S. Census Bureau’s 2017 Economic Census, all of the potentially affected industries are overwhelmingly comprised of small businesses, as defined by the SBA. Based on this information, the rule could impact a substantial number of small entities.

In addition to determining if a substantial number of small entities are likely to be impacted by this final rule, the BLM must also determine whether the final rule is anticipated to have a significant economic impact on those small entities. The Regulatory Flexibility Act (RFA) does not define “significant.” Significance must be determined on a case-by-case basis. Significance should not be viewed in absolute terms but should be seen as relative to the size of the business, the size of the competitor’s business, and the impact the regulation has on larger competitors.

An analysis that looks at the individual financial circumstances, *i.e.*, profit margin, for each firm within an industry would help in answering the significance question. However, such financial information on individual claimants is not available. Even assessing an individual entity’s ability to pay is problematic as there is limited information on most claimants. Most entities holding mining claims or sites are either individuals or privately held companies.

At the end of FY 2023, there were approximately 24,200 claimants holding approximately 515,000 mining claims and sites. This works out to be an average of 21 claims or sites per claimant. Assuming the number of claims and sites, and claimants who do not file a fee waiver does not significantly change as a result of the rule, we estimate a total maintenance fee increase of about \$22 million per

year. This represents an average maintenance fee increase of about \$892 per claimant. The actual impact on an individual claimant will depend on a number of factors, including the number of claims or sites that are actually held. However, the average number of claims and sites actually held by individuals and companies that would be considered small entities by SBA would likely be significantly less than the 15 claims or sites per claimant figure. This average claims-per-claimant figure is skewed by the large number of claims and sites held by a few large mining companies. For example, the three companies holding the most mining claims or sites at the end of FY 2018 each held over 10,000 claims or sites. All three of those companies were large multi-national corporations.

For the location fee increase, we estimate a total annual fee increase of about \$605,000. Assuming 69,000 new filings per year and using the figure of approximately 24,200 total claimants, we estimate there are approximately 3 new claims per claimant per year. The average location fee increase will be approximately \$27 per claimant.

Most importantly, however, the fees remain unchanged in real terms, and adjusting fees for inflation does not represent a real cost increase for claimants. For example, the maintenance fee of \$165 in 2019 dollars is the same as the fee of \$200 in 2024 dollars. For this reason, and the reasons described above, the BLM has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

This rule does not meet the criteria under 5 U.S.C. 804(2), the Congressional Review Act. This rule:

(a) Will not have an annual effect on the economy of \$200 million or more. The revised regulation will not materially alter current BLM policy. The fee adjustments are authorized by statute. The total amount of fees collected, including the effects of the adjustment, is estimated to be \$124 million annually, of which \$22 million is attributable to the adjustments made in this rule.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will 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.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is unnecessary.

This rule will not produce a Federal mandate of \$200 million or greater in any year. It is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the BLM finds that the rule does not have takings implications. A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a taking. The Federal courts have heard a number of suits challenging the imposition of the rental and maintenance fees as a taking of a right, or, alternatively, as an unconstitutional tax. The courts have upheld the fee legislation and the BLM regulations as a proper exercise of Congressional and Executive authorities.

Executive Order 13132, Federalism

The final rule 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. Therefore, in accordance with Executive Order 13132, the BLM has determined that the final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM finds that the final rule does not include policies that have Tribal implications. Because this rule does not make significant substantive changes in the regulations and does not specifically involve Indian reservation lands (which are closed to the operation of the Mining Law), the BLM finds that the rule will have no implications for Indians, Indian Tribes, and Tribal governments.

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

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the BLM finds that the final rule does not unduly burden the judicial system, and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. The BLM consulted with the Department of the Interior's Office of the Solicitor during the drafting process.

Paperwork Reduction Act

The BLM has determined this final rule does not contain any information collection requirements that the Office of Management and Budget (OMB) must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act (NEPA)

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because this rule is part of the routine administration of the fee legislation and is covered by a categorical exclusion. This rule will result in no new surface disturbing activities and therefore will have no

effect on ecological or cultural resources. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205. The rule does not meet any of the extraordinary circumstances criteria for categorical exclusions listed at 43 CFR 46.215. Under Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department, the term "categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect on procedures adopted by a Federal agency and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

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

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. To the extent that the rule affects the mining of energy minerals (*i.e.*, uranium and other fissionable metals), the rule applies only a statutory adjustment of the mining claim location and maintenance fees

that the BLM has been collecting for many years. It will not significantly change financial obligations of the mining industry.

Author

The principal author of this final rule is John Grasso in the Solid Minerals Group assisted by the Division of Regulatory Affairs, Washington Office, BLM.

List of Subjects in 43 CFR Part 3830

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the BLM amends 43 CFR part 3830 as follows:

PART 3830—LOCATING, RECORDING, AND MAINTAINING MINING CLAIMS OR SITES; GENERAL PROVISIONS

■ 1. The authority citation for part 3830 continues to read as follows:

Authority: 18 U.S.C. 1001, 3571; 30 U.S.C. 22, 28, 28k, 242, 611; 31 U.S.C. 9701; 43 U.S.C. 2, 1201, 1212, 1457, 1474, 1740, 1744; 115 Stat. 414; Pub. L. 112–74, 125 Stat. 786.

Subpart D—BLM Service Charge and Fee Requirements

■ 2. Amend § 3830.21 by revising paragraphs (a) and (d) of the table to read as follows:

§ 3830.21 What are the different types of service charges and fees?

* * * * *

Transaction	Amount due per mining claim or site	Waiver available
(a) Recording a mining claim or site location (part 3833).	A total sum which includes: (1) The processing fee for notices of location found in the fee schedule in § 3000.12 of this chapter; (2) A one-time \$49 location fee; and (3)(i) For lode claims, mill sites and tunnel sites, an initial \$200 maintenance fee; or (ii) For placer claims, an initial \$200 maintenance fee for each 20 acres of the placer claim or portion thereof.	No.
* * * * *		
(d) Maintaining a mining claim or site for one assessment year (part 3834).	(1) For lode claims, mill sites and tunnel sites, an annual maintenance fee of \$200 must be paid on or before September 1 each year. (2) For placer claims, a \$200 annual maintenance fee for each 20 acres of the placer claim or portion thereof must be paid on or before September 1 each year.	Yes. See part 3835.
* * * * *		

This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

Steven Feldgus,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2024–14301 Filed 6–28–24; 8:45 am]

BILLING CODE 4331–29–P

Proposed Rules

Federal Register

Vol. 89, No. 126

Monday, July 1, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF STATE

2 CFR Part 602

48 CFR Parts 604, 652

[Public Notice: 11513]

RIN 1400–AF09

Acquisition Regulation and Grants Regulation: Contractor and Grantee Counterterrorism Vetting

AGENCY: Department of State.

ACTION: Advance Notice of Proposed Rulemaking; request for comment.

SUMMARY: The Department of State has identified namecheck vetting as a critical tool that can be used, where appropriate, to mitigate the risk that U.S. government activities could inadvertently benefit terrorist groups, their members, or their supporters, and is crafting rules that will address the Department's namecheck vetting process, including setting out the requirements for including vetting provisions in Department of State solicitations and awards for both grants and contracts to allow for namecheck vetting of key individuals of implementing partners and sub-contractors or sub-grantees, beneficiaries of programs, or other identified categories of individuals, when deemed appropriate by the relevant Department official.

DATES: The Department of State will accept comments until July 31, 2024.

ADDRESSES: Persons with access to the internet may view this rule and submit comments by going to www.regulations.gov and searching for docket number DOS–2024–0008.

• *Inspection of public comments:* All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business or financial information that is included in a comment. The Department of State will post all comments received before the close of the comment period at www.regulations.gov. For a summary

of this rulemaking, please go to www.regulations.gov/DOS-2024-0008.

FOR FURTHER INFORMATION CONTACT:

Annura Murtadha, Vetting Chief,
MurtadhaAN@state.gov, (202) 663–3871 (Fax).

SUPPLEMENTARY INFORMATION: Because security screening precautions have slowed the delivery and dependability of surface mail and hand delivery to the Department of State in Washington, DC, the Department recommends sending all comments to the Federal eRulemaking Portal. The email address and fax number listed above are provided in the event that submission to the Federal eRulemaking Portal is not convenient (all comments must be in writing to be reviewed). You may submit comments by electronic mail, avoiding the use of any special characters and any form of encryption.

The purpose of this ANPRM is to gather data for the Department to amend 48 CFR chapter 6 and 2 CFR chapter VI, to add new pre-award and award terms for contracts and grants. The pre-award provisions will delineate the namecheck vetting process and the applicant's responsibilities for submitting information on individuals who will be subject to namecheck vetting, prior to award. The award provisions will delineate the post-award namecheck vetting process and the recipient's responsibilities with respect to namecheck vetting during the award period.

This regulatory action will boost national security by helping the Department to mitigate the risk that agency funds and other resources do not inadvertently benefit terrorist groups, their members, or their supporters.

Background

Authority for vetting is inherent in the Department of State's ("the Department" or "State") authority to carry out the necessary administrative steps to implement foreign assistance and other Department of State programs and activities. The Office of Risk Analysis and Management (RAM) is the sole organization designated within the Department to conduct counterterrorism name-check vetting. In addition, section 7034(e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024 (Div. F, Pub. L. 118–47) and similar provisions in prior year acts specifically

contemplates the implementation of counterterrorism name-check vetting (described in the provision as "partner vetting") and establishes requirements for the expansion of the vetting program, which the Department addresses as appropriate.¹ Section 7034(e) also provides that the Secretary may restrict the award of, terminate, or cancel contracts, grants, or cooperative agreements or require an awardee to restrict the award of, terminate, or cancel a sub-award based on information in connection with a partner vetting program. With respect to foreign assistance programs, section 635(a) of the Foreign Assistance Act of 1961 (FAA) provides that assistance may be provided on such terms as may be determined to be best suited to the achievement of the purposes of the FAA.

Consistent with U.S. law and Department policy, the Department makes every reasonable effort to guard against the risk that U.S. government activities could inadvertently benefit terrorist groups, their members, or supporters. Prior to furnishing assistance or providing funding, the Department first assesses the risk that funds, goods, services, or other resources to be provided could inadvertently benefit terrorist groups, their members, or their supporters, including people or organizations who are not formally designated as terrorists by the U.S. government but who may nevertheless be linked to terrorist activities.

Where such risk is identified by a State Department Program Office, one way to mitigate it is through name-check vetting.

¹“(e) Partner Vetting.—Prior to initiating a partner vetting program, providing a direct vetting option, or making a significant change to the scope of an existing partner vetting program, the Secretary of State and USAID Administrator, as appropriate, shall consult with the Committees on Appropriations: Provided, That the Secretary and the Administrator shall provide a direct vetting option for prime awardees in any partner vetting program initiated or significantly modified after the date of enactment of this Act, unless the Secretary Administrator, as applicable, informs the Committees on Appropriations on a case-by-case basis that a direct vetting option is not feasible for such program. Provided further, That the Secretary and the Administrator may restrict the award of, terminate, or cancel contracts, grants, or cooperative agreements or require an awardee to restrict the award of, terminate, or cancel a sub-award based on information in connection with a partner vetting program.”

The Department of State has been conducting name-check vetting for programs in certain select countries since 2012. Through a five-year joint pilot with the U.S. Agency for International Development (USAID) that concluded in 2017, 688 contracts and grants were subject to name-checking vetting, with 1,593 key individuals from 410 organizations being vetted. The Department of State's RAM vetting program is designed to gather information about key individuals employed at organizations seeking U.S. funding, as well as subcontractors or subgrantees, beneficiaries of programs, or other identified categories of individuals that receive some benefit from an award. That information is then vetted against public sources of information and information contained in non-public relevant U.S. government databases for ties to terrorist groups, their members, or their supporters.

The Joint State-USAID Pilot Program

The Department conducted a joint pilot program with the USAID starting in 2012. The joint State-USAID pilot was initially authorized under section 7034(o) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117), and required consultations between the Department and USAID and the Committees on Appropriations prior to implementation.

The joint State-USAID pilot program included both agencies' programming in five countries—Guatemala, Ukraine, Lebanon, Kenya, and the Philippines. It was later expanded to include Afghanistan. These countries were chosen to reflect geographic diversity and a range of terrorist threat levels in contexts where comparable programs were being implemented by both agencies. During the pilot's early implementation, the Department and USAID received individuals' personal information through OMB-approved forms made available to the public via an online portal. The relevant individuals were vetted, and derogatory information identified was provided to the program office. The program office would then decide on whether to proceed in light of that information.

Throughout the joint pilot, the Department and USAID also sought feedback from nongovernmental stakeholders. Some key areas of concern noted during consultations included standardization of vetting procedures, data privacy, and exemptions. To reduce concerns about effort duplication, State and USAID created a steering group to coordinate and standardize processes and data

collection. In addition, to reduce the burden placed on implementers, both agencies instituted online portals for submitting individuals' information, rather than using paper forms.

These online portals provided a secure platform and more streamlined means of submitting information and included instructions in multiple languages. Further, the agencies exercised best practices to protect submitted personal information throughout the joint pilot to ensure participants' privacy and minimize risk to those operating in more repressive contexts. Access to information submitted to the Department was limited within the Department to only those with a "need-to-know," such as the analysts charged with conducting the vetting. Records were retained and disposed according to a standardized records schedule consistent with National Archives and Records Administration guidance.

The Department also implemented structures to ensure those without required documentation can still participate in programming after their case is reviewed on an ad hoc basis.

A report was provided to Congress in 2017 at the conclusion of the pilot, consistent with section 7034(e)(1) of the Department of State, Foreign Operations, and Related Program Appropriations Act, 2017 (Div. J, Pub. L. 115–31).

Following completion of the pilot program, the Department of State's name-check vetting program has continued to operate consistent with U.S. government and Department guidance, including the Department's Foreign Affairs Manual (FAM).² The vetting program continues to be managed by the Office of Risk Analysis and Management (RAM) within the Department and continues to adapt to address feedback received, evolving needs of implementers, and dynamic global security challenges.

After the Department completed the joint pilot program with USAID, the number of countries under the RAM vetting program increased due to evolving circumstances in countries where Department programs are implemented. Programs in eight countries are currently subject to counterterrorism name-check vetting based on program offices' assessments of the risk that program resources will inadvertently provide a benefit to terrorist groups, their members, or their supporters. Additional countries could be added if the implementing program office, through its risk assessment

process, assesses it is necessary to mitigate risk of foreign assistance or Department programs or activities inadvertently benefitting terrorist organizations or their supporters, subject to consultation with the Appropriations Committees, consistent with requirements in the annual appropriations acts for any significant expansion of the RAM vetting program. With respect to programs within each of these countries, the Department conducts a program-specific analysis and determines whether vetting is the appropriate risk-mitigation method for a particular award. Government-to-government assistance, and contributions to Public International Organizations, nonproliferation programs, other U.S. Government agencies, or the National Endowment for Democracy are not subject to vetting under this program.

Pre-Award Vetting and Source Selection

The Department applies name-check vetting to acquisitions and foreign assistance in countries, as needed, where the risk has been determined to necessitate the practice.

Offerors (potential recipients of contract or grant funds) applying or competing for State Department funding are made aware of the security screening requirement prior to application; when an acquisition, grant, contract, or cooperative agreement is subject to name-check vetting, a provision in the solicitation will notify offerors of the vetting requirements and procedures.

Vetting for contracts and grants is conducted prior to award, often when the Department establishes the competitive range (see 48 CFR 15.306(c)).³ For indefinite contracts—those that provide an indefinite quantity of supplies or services during a fixed period—vetting will take place before the basic contract is awarded, in anticipation of potential orders. For all other contracts, including those that qualify as simplified acquisitions or sealed bids, the Contracting Officer determines the appropriate timing to require offerors to submit individuals for vetting.

When the Department decides to move forward with vetting an offeror, the offeror will be instructed to submit the completed Risk Assessment Information Form, DS–4184 (all DS–4184 form submissions are made through the internet-based RAM Portal). The information collection tool (DS–4184) identifies the biographic

³ Competitive Range refers to those offerors whose proposals meet a minimum threshold and have a reasonable chance of being selected for award.

² 14 FAM 247.

information required for the key individuals of the offeror, required subcontractors, and, if applicable, beneficiaries. (Note—no biometric information, such as fingerprints, are collected.) Offerors are informed that key individuals include principal officers of the organization's governing body (e.g., chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees), the principal officer and deputy principal officer of the organization (e.g., executive director, deputy director, president, vice president), or the program manager for the U.S. government-financed program, and any other person with significant responsibilities for administration of the U.S. government-financed activities or resources.

U.S. persons' (U.S. citizens and lawful permanent residents) information submitted through the RAM Portal is subject to the Privacy Act of 1974, as well as other authorities and guidance pertaining to information security, disclosure, and disposition. While non-U.S. persons' information is not protected under the Privacy Act, the Department aims to provide robust privacy protections for individuals regardless of the citizenship status of the record holder. The Department takes the responsibility to protect personal information seriously, particularly in contexts where there is increased risk for participants. The Portal that the Form is submitted through is housed within Department of State servers and access is strictly controlled. The vetting office's systems are also subject to auditing under the Federal Information Security Modernization Act (FISMA), which requires specific infrastructure for the provision of information security.

Once all information is submitted through the RAM Portal, the vetting official⁴ uses multiple commercial and investigative databases, public search engines, and both unclassified and classified systems operated by the Department and other U.S. government agencies to complete the name-check vetting. The RAM vetting official is also responsible for responding to questions from offerors about information to be included on the Form.

Upon completion of the vetting, the RAM vetting official conveys the vetting results of each vetted offeror to the relevant Department program office. The RAM vetting office will only identify

and provide to the program office derogatory information with a potential nexus to terrorism activities or violations of United States policy (i.e. human rights violations or sanctioned individuals/entities); other potentially unfavorable information (e.g., disorderly conduct, speeding tickets, or a criminal conviction for operating a motor vehicle while intoxicated) would not be provided to the program office. A name-match alone would not typically be considered sufficient evidence that a key individual has derogatory information. The program office makes the ultimate decision regarding whether to move forward with an offeror, and vetting is only one factor among many that go into making this decision.

The Department's counterterrorism vetting program was designed to avoid adding a significant amount of time to the contracting and grant process. The process was also designed to avoid delays in an award, and the typical vetting case takes, on average, fewer than 14 days. Source selection proceeds separately from vetting, meaning that the name-check process for vetting occurs concurrently to other review processes. Generally, the Department finds there is no back-and-forth between the offeror and the RAM vetting office after the offeror completes and submits the DS-4184 except in limited circumstances when the RAM vetting office must re-contact the offeror to request missing information. In circumstances when derogatory information is identified and the program office informs the offeror that they are ineligible for the award, the offeror is entitled to request a redetermination of the decision and to provide additional documentation or explanation that may be used to make a revised determination. However, due to the sensitive nature of much derogatory information, the Department does not generally share such information with offerors if vetting is the cause of the Department's decision to not move forward with an offeror.

During the 5-year period of the pilot program, 4.6% of offerors had key individuals found to have derogatory information, and 2.98% were ultimately deemed to be ineligible to participate in the award.

Offerors who change any key individuals for any reason must submit their revised DS-4184 through the RAM Portal as soon as possible to allow for vetting of individuals not previously vetted. Name-check vetting may also be required for subcontractors and subgrantees. In most circumstances, only those subcontracts and subgrants for which consent is required in

accordance with FAR clause 52.244-2 will be subject to name-check vetting. The contracting officer will not consent to a subcontract or subgrant until the subcontractor and subgrantee's key individuals have completed vetting. When the Department considers it appropriate, additional subcontracts for certain classes of items (supplies and services) that are considered higher risk may also be subject to vetting, even if Contracting Officer consent is not required. These classes of items will be identified in the solicitation, and the offeror will be responsible for ensuring that subcontracts at any tier are vetted through the RAM process before placing the subcontracts. In practice, this typically requires the prime contractor to include all known subcontractors when responding to the Department's solicitations. During this pre-award stage, offerors may either collect the necessary key individual information from subcontractors and subgrantees and directly submit it through the RAM Portal, or the subcontractors and subgrantees may submit it directly through the RAM Portal.

Post-Award Vetting

Per 14 FAM 247, all grantees and contractors (including subgrantees and subcontractors) subject to initial vetting must resubmit individuals for vetting annually or when they replace key individuals with individuals who have not been previously vetted for that contract or grant. Previously vetted offerors and their key individuals are also subject to vetting when responding to solicitations for new grants or contracts for which the Department deems vetting an appropriate risk mitigation measure. However, because vetting is valid for one year, individuals submitted on multiple awards within a given year will only be vetted one time if the same personal information is submitted. Additionally, when vetting is determined to be appropriate for a given award as identified in the initial solicitation, the Department can require vetting at any time post-award at the Department's discretion, including for the final beneficiaries of the award.

Questions for the Public

The Department of State welcomes public comment on the discussion of existing RAM vetting processes as described above, but the Department would particularly benefit from commenters addressing one or more of the following questions with detailed explanations of the reasoning, data, or experiences informing their perspective.

⁴ Namecheck vetting officials are U.S. citizen employees of the Department in the RAM office not involved in the source selection process and operate under agency guidance at 14 FAM 247.

Costs Associated With Name-Check Vetting

Under OMB Control NO. 1405–0204, the Department of State has historically estimated that it takes, on average, 90 minutes for a respondent (*i.e.*, an offeror) to fully complete the DS–4184 and to submit it through the RAM Portal. The Department estimates the average offeror submits information on five key individuals (and notes that this has ranged between one and 50 individuals), and the 90 minute estimate is inclusive of all the time it takes to learn the relevant instructions and information requirements, gather all necessary information and documentation from key individuals (including subcontractors and subgrantees), and compile that information into the RAM Portal and submit it to the Department.

1. Is our time estimate accurate for your organization? If not, please provide us an estimate of the time that your organization expends submitting a completed DS–4184 through the RAM Portal. This estimate may include some or all of the following factors, and commenters are encouraged to provide a specific breakdown of each element of the time commitment:

I. The time spent learning the requirements for RAM Vetting, including reading relevant instructions, understanding which individuals qualify as reportable key individuals, and learning how to navigate the RAM Portal.

II. The time spent explaining vetting requirements to all key individuals.

III. The time each key individual of your organization, as well as subcontractors and subgrantees, or final beneficiaries expends gathering the necessary information and documentation to be responsive to the information collected on the DS–4184.

IV. Any travel time directly associated with developing the information necessary to be responsive to the DS–4184.

2. Are there additional time or financial costs that are routinely incurred while responding to or submitting the DS–4184 that we have not previously captured?

3. On average, how many individuals does your organization include per submission for vetting? Please consider submissions of key individuals, subcontractors and subgrantees, and final beneficiaries who are required to submit vetting information in your estimate.

4. Have vetting requirements resulted in prospective grantee or contractor organizations choosing to not

participate or drop out of the application process because of:

I. Concerns regarding the cost, capacity, or ability to develop or gather the necessary identity documentation or biographic information about their key individuals or other vetted parties?

II. Other reasons associated with difficulty or inability to comply with vetting requirements? Please provide those reasons.

5. What financial costs, if any, has your organization incurred associated with maintaining appropriate information technology or physical filing systems for protecting the biographic information that must be collected prior to completing the DS–4184?

Current RAM Vetting Procedures

As described in the background section, the entire RAM vetting process takes, on average, fewer than 14 days, typically does not require significant back-and-forth between the offeror and the Department of State, and occurs concurrently to other review processes the program office is conducting.

1. In your organization's experience or in your understanding of other organizations' experiences:

I. How frequently does RAM vetting require contacting the Department of State prior to submission of the DS–4184 in the RAM Portal to seek clarification regarding information that needs to be submitted or other challenges with navigating the RAM portal?

II. How frequently does RAM vetting involve the Department following-up with your organization after initial submission to request additional information or documentation? How much additional time is typically involved in responding to and submitting any follow-up requests for additional information?

III. Has your organization ever requested reconsideration of an initial determination of ineligibility? Was your organization able to provide the necessary explanation or additional documentation to successfully revise the Department's original determination of ineligibility?

2. How might the Department structure the reconsideration or appeals process to provide offerors adequate opportunity to rebut an initial determination of ineligibility due to derogatory information? What type of feedback from the Department would help allow the offeror to provide more

effective documentation or explanation when requesting a reconsideration?

Seth E. Green,

Deputy Assistant Secretary, Logistics Management, U.S. Department of State.

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BILLING CODE 4710–24–P

DEPARTMENT OF AGRICULTURE

2 CFR Chapter IV

[Docket No. USDA–2024–0002]

RIN 0505–AA18

USDA Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Office of the Chief Financial Officer, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to revise parts of the USDA Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. USDA proposes both policy changes and clarifications to existing requirements including plain language revisions. USDA is proposing revisions intended in many cases to reduce agency and recipient burden.

DATES: We will consider comments that we receive by July 1, 2024.

ADDRESSES: We invite you to submit comments in response to this proposed rule. You may submit your comments through the following method below:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for Docket ID USDA–2024–0002. Follow the instructions for submitting comments.

All comments received will be made publicly available on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Tyson P. Whitney, Office of the Chief Financial Officer, Director, Transparency and Accountability Reporting Division, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–9011, 202–720–8978, tyson.whitney@usda.gov.

Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The purpose of USDA's action is to provide conforming updates to OMB's

April 22, 2024 updates to 2 CFR part 200, implement plain language use, and to propose revisions intended in many cases to reduce agency and recipient burden. USDA proposes both policy changes and clarifications to existing requirements. Except for minor or technical corrections, such as updates to citations, the proposed changes and the reasons for them are explained in detail in the *Proposed Regulations* section of this notice of proposed rulemaking (NPRM).

Regulatory History

USDA conducted a comprehensive review of the regulatory history of 2 CFR Chapter IV and has identified that much of the current language is relatively unchanged from the time of each respective regulatory implementation over the past several decades. Reviewing the regulatory history of USDA's assistance regulations is valuable as it illustrates historic administrative priorities active at the time of implementation, both at USDA and across the Federal government. In addition, a full review of the regulatory history demonstrates that USDA has maintained an enduring commitment over more than forty years to reducing burden on applicants across its financial assistance landscape.

The regulatory history of USDA-wide financial assistance begins on November 10, 1981, when USDA issued a final rule to establish at 7 CFR part 3015 Department-wide policies and standards for administration of grants and cooperative agreements, to provide uniformity in policy and standardization of guidance for all of USDA. See 46 FR 55636. Prior to the issuance of this final rule, USDA issued internal regulations on the administration of grants and cooperative agreements which directed the agencies to implement USDA, OMB and other guidance agencies' policies and directives through issuance of their own individual agency assistance regulations or directives. This action was intended to reduce confusion, duplication and complexity in the administration and management of Federal financial assistance provided by USDA.

USDA also issued rules in response to several laws, Executive Orders, and OMB Circulars, which expanded the footprint of USDA assistance regulations. For example, on June 24, 1983, USDA issued a final rule to amend 7 CFR part 3015 to implement E.O. 12372, "Intergovernmental Review of Federal Programs," section 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506), and section 204 of the Demonstration Cities

and Metropolitan Development Act, as amended (42 U.S.C. 3334), and thereby replace the intergovernmental consultation system developed under OMB Circular A-95. See 48 FR 29100. This language remains unchanged to date.

Other changes to the USDA assistance regulations originate from past administrative priorities. For example, on May 9, 1986, USDA issued a final rule to amend 7 CFR part 3015 to add a new section to implement requirements found in Secretary's Memorandum (SM) 5000-2 to all discretionary grants and cooperative agreements. See 51 FR 17169. SM 5000-2 established USDA policy regarding competition in the awarding of grants and cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences. This action expanded the application of the competition requirement to all discretionary awards as the Department determined that there was no logical reason to distinguish between awards made to further research, extension, and teaching programs and other discretionary awards, as competition was deemed beneficial in either instance.

Over the next several years, USDA joined in several government-wide common rules, which demonstrates a commitment to the establishment of a uniform applicant experience with compliance requirements. For example, on March 11, 1988, USDA adopted a final common rule to establish at 7 CFR part 3016 administrative requirements applicable to assistance relationships established by grants and cooperative agreements, including subawards, to State and local governments. See 53 FR 8042. Prior to that date, administrative requirements for awards and subawards under all USDA programs were codified at 7 CFR part 3015. At that time, note that the common rule applied to USDA's non-entitlement programs, but did not apply to certain entitlement programs.

USDA joined several other common rules focused on government-wide priorities, such as nonprocurement debarment and suspension, drug-free workplace, and lobbying. On January 30, 1989, USDA adopted a final common rule to establish at 7 CFR part 3017 the uniform system of nonprocurement debarment and suspension as required under Executive Order (E.O.) 12549. See 54 FR 4722. On January 31, 1989, USDA adopted an interim final common rule requiring grantees to take steps to provide a drug-free workplace as required by the Drug-Free Workplace Act of 1988 (Pub. L.

100-690). See 54 FR 4947. This action established a new Subpart F at 7 CFR part 3017. On December 18, 1989, OMB issued interim final government-wide guidance on lobbying as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, Section 319 (Pub. L. 101-121). See 54 FR 52306. On February 26, 1990, USDA adopted an interim final common rule to establish at 7 CFR part 3018 the OMB government-wide guidance on lobbying. See 55 FR 6736. On May 25, 1990, USDA adopted a final common rule related to drug-free workplace requirements for financial assistance. See 55 FR 21681. This action amended the earlier interim final rule.

During this time, Federal financial assistance continued to be managed through OMB's issuance of Circulars which agencies subsequently adopted. Accordingly, on August 24, 1995, USDA issued an interim final rule to implement OMB's Circular A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." See 60 FR 44122. This action established 7 CFR part 3019 and consequently amended 7 CFR part 3015. Later, on March 16, 2000, USDA adopted an interim final rule to amend the earlier codification of OMB Circular A-110 at 7 CFR part 3019. See 65 FR 14406. This action required data produced under a financial assistance award to be made available to the public through procedures established under the Freedom of Information Act and provided for a reasonable fee to cover costs responding to such a request.

Reviewing the regulatory history has revealed one area where OMB issued guidance, but no common rule was subsequently issued or amended. On January 19, 1996, OMB issued interim final amendments to the OMB government-wide guidance on lobbying following the passage of the "Lobbying Disclosure Act of 1995" (Pub. L. 104-65). See 61 FR 1412. This action removed the reporting requirements at Subpart F and made technical corrections to the lobbying disclosure form. This NPRM proposes conforming edits to 2 CFR part 418 which will align USDA with the 1996 interim final amendments.

On August 14, 2000, USDA issued a final rule to revise its grants management regulations at 7 CFR 3016 to include provisions specific to USDA entitlement programs. See 65 FR 49474. This language serves as the basis for the present-day 2 CFR part 416.

On December 6, 2000, the Office of Science and Technology Policy issued

the Federal Policy on Research Misconduct which addresses research misconduct in research conducted by Federal agencies, conducted or managed for the Federal government by contractors, or supported by the Federal government and performed at research institutions. USDA initially implemented these requirements as interim policy through SM 2400–007. On August 13, 2010, USDA issued a final rule to establish at 7 CFR part 3022 the codification of the Office of Science and Technology Policy's Federal Policy on Research Misconduct. See 75 FR 49357. This language remains unchanged to date.

Several regulatory changes concerned updates regarding nonprocurement debarment and suspension and drug-free workplace. On November 6, 2003, OMB issued a final government-wide common rule on nonprocurement debarment and suspension and drug-free workplace requirements for financial assistance. See 68 FR 66534. USDA adopted this rule on an interim final basis, to request further comment on sections related to appeals to an administrative law judge and delegations of authority related to the Forest Service. This action amended the existing 7 CFR part 3017 and established 7 CFR part 3021 to separate nonprocurement debarment and suspension from drug-free workplace requirements for financial assistance. On May 25, 2010, USDA established a new part 417 on nonprocurement debarment and suspension at 2 CFR Chapter IV that adopted and supplemented the Office of Management and Budget (OMB) guidance at 2 CFR part 180 as USDA's policies and procedures for nonprocurement debarment and suspension. The introduction of part 417 of 2 CFR replaced and removed USDA's previous implementation of the government-wide common rule on nonprocurement debarment and suspension at 7 CFR part 3017. This language serves as the basis for the present-day 2 CFR part 417. In addition, on December 8, 2011, USDA issued a direct final rule to remove its regulation implementing the government-wide common rule on drug-free workplace requirements for financial assistance at 7 CFR part 4021 and issued a new regulation to adopt the Office of Management and Budget guidance (2 CFR part 182) at 2 CFR part 421. See 76 FR 76609. This action made no substantive changes in USDA's policy or procedures for drug-free workplace. This language remains unchanged to date.

A major shift in the USDA's assistance regulations occurred on

December 26, 2013, when OMB issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly referred to as the "Uniform Guidance", codified at 2 CFR part 200) that "set standard requirements for financial management of Federal awards across the entire Federal government." See 78 FR 78590. On December 19, 2014, OMB and other Federal award-making agencies, including USDA, issued an interim final rule to implement the Uniform Guidance. See 79 FR 75867. As part of the December 2014 rulemaking, the Office of the Chief Financial Officer adopted 2 CFR part 200, along with an agency-specific addendum in a new 2 CFR part 400. USDA added 2 CFR parts 415, 416, 418 and 422. The content found in these parts represented the delta between the Uniform Guidance and the USDA assistance regulations in 7 CFR. In the same rulemaking, the Office of the Chief Financial Officer removed parts 3015, 3016, 3018, 3019, 3022 and 3052 from title 7 of the CFR, as they became obsolete with the publication of the interim final rule. See 79 FR 75981. On February 16, 2016, USDA issued a final rule to finalize certain component agency portions of the Uniform Guidance and make conforming changes. This rule confirmed that 2 CFR part 400, 415, 416, 418, and 422 as described in the interim final rule were adopted with no changes. See 81 FR 7695.

Over the next couple of years, various sections of USDA assistance regulations were updated. For example, on October 4, 2019, USDA issued a final rule to adopt certain provisions of the Office of Management and Budget (OMB) guidelines to agencies on governmentwide debarment and suspension (nonprocurement) not previously adopted and to adopt changes made to the OMB guidance after its initial publication in 2010. See 84 FR 52993. In addition, on November 16, 2020, USDA issued a final rule to make technical corrections to the Department's grants and agreements regulations. See 85 FR 72912.

Finally, on April 22, 2024, OMB issued a final rule and notification of final guidance to revise the OMB Guidance for Grants and Agreements. The action revises and updates the guidance, incorporating certain statutory requirements and clarifying certain sections including revisions to improve Federal financial assistance management, transparency, and oversight. See 89 FR 30046. This NRPM proposes several conforming edits which align USDA's assistance

regulations with OMB's recent final rule.

Proposed Regulations

2 CFR part 400—Uniform administrative requirements, cost principles, and audit requirements for Federal awards

Current Regulation: Part 400 provides the USDA adoption of subparts A through F of 2 CFR part 200, as supplemented by the same part.

Proposed Regulation: The proposed revision updates the authorities under which this part is issued. It additionally creates a new definition section applicable to 2 CFR Chapter IV which centralizes existing definitions from current parts of 2 CFR Chapter IV and defines for USDA certain terms present in 2 CFR Subtitle A but not defined in that subtitle. USDA proposes to clarify conflict of interest requirements applicable to each USDA awarding agency, which includes the implementation of procedures to identify, disclose, and mitigate identified conflicts of interest that may arise during the period of performance of an award. The proposed revisions also include minor updates to terminology to conform to the April 22, 2024, OMB updates to 2 CFR part 200.

Reasons: The reference USDA proposes to add clarifies the source of the authority to adopt subparts A through F of 2 CFR part 200. The centralization of definitions provides clarity and reduces recipient and agency and recipient burden on the interpretation and application of 2 CFR Chapter IV. The addition of new definitions enhances uniform interpretation and application of 2 CFR Subtitle A and 2 CFR Chapter IV which will improve the management, transparency, and oversight of USDA Federal financial assistance awards.

Clarifying conflict of interest requirements for USDA awarding agencies reduces agency burden and improves the management and oversight of USDA Federal financial assistance awards. The proposed language identifies timeframes for discovery of conflicts of interest which enables uniformity in the approach of this process across USDA's awarding agencies.

Adding conforming language to adhere to the April 22, 2024 OMB updates to 2 CFR part 200 satisfies direction provided in OMB Memorandum M–24–11 and mitigates any potential conflict between 2 CFR part 200 and 2 CFR Chapter IV. 2 CFR part 401—[Reserved]

Current Regulation: Part 401 is currently reserved.

Proposed Regulation: USDA proposes to add a new part 401 that identifies the USDA policy for the implementation of waivers to the Build America, Buy America (BABA) Act domestic content procurement preferences for Federal financial assistance programs and projects, as required by 2 CFR 184.7b.

Reasons: The proposed language ensures USDA compliance with regulatory requirements. It additionally, transparently identifies to the public the processes by which USDA ensures full compliance with the statutory requirements related to issuing waivers to the BABA domestic content procurement preference for Federal financial assistance programs and projects.

2 CFR part 415—General Program Administrative Regulations

Current Regulation: Part 415 establishes standards for competition in the awarding of discretionary grants and cooperative agreements, requires the acknowledgement of USDA support on publications and audiovisuals, and establishes the regulatory framework for compliance with intergovernmental review of USDA programs.

Proposed Regulation: USDA proposes to make several updates at this section.

USDA proposed updates that clarify requirements related to the competition of discretionary grants and cooperative agreements. This includes the dissemination of notices of funding opportunities, the selection of independent reviewers for the conduct of merit review, conflict of interests related to the conduct of merit review, the treatment of unsolicited applications and related materials, exceptions to requirements for competition in discretionary grants and cooperative agreements, and inherently governmental functions related to financial assistance administration.

Additional proposed updates include modernizing the requirements for acknowledgement of USDA support and intergovernmental review of USDA programs and activities. Plain language updates and technical corrections are additionally proposed at this part.

Reasons: The proposed updates related to the competition of discretionary grants and agreements demonstrate USDA's commitment to upholding the direction related to competition originally provided by the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301–6308). The establishment of direction related to the dissemination of notices of funding opportunities are intended to foster an increase in innovation, competition, and diversity in applicants

to discretionary grants and cooperative agreements funding opportunities. Broad dissemination and a deliberate focus on identifying the greatest number and diversity of potential applicants may additionally decrease burden on prospective first-time applicants unfamiliar with USDA programs. The proposed language related to merit review enhance the conduct of that process at USDA by providing clarification and additional direction on USDA awarding agency procedures.

Proposed language related to the treatment of unsolicited applications and related materials reflect the modernization and digitization of many grants administration processes. In addition, these updates will decrease agency burden while retaining flexibility and discretion to make awards following unsolicited applications.

Proposed changes to the noncompetitive justification statements reflect modernization of these statements, which were first established in 1986. These updates enhance the transparency of noncompetitive awards, which are critical to the function of USDA programs and activities, and identify agency flexibility in establishing alternative exceptions to competition subject to approval by the Secretary of Agriculture and OMB. In addition, the requirement that any additional noncompetitive justification statements that may be established by USDA awarding agencies be made publicly available will decrease burden on prospective applicants who may be unfamiliar with USDA noncompetitive discretionary grant and cooperative agreement programs.

In addition, proposed changes to this section incorporate direction related to inherently governmental functions as established by the Office of Federal Procurement Policy (OFPP) Policy Letter 11–01, which includes considerations related to financial assistance. This change will strengthen the overall administration of financial assistance administration by providing clear direction to USDA awarding agencies.

Further proposed changes modernize the acknowledgement of USDA support on information dissemination products, which ensures broad coverage of materials produced with USDA Federal financial assistance support. Expansion of the terminology used at this part, which was established in 1981 and presently refers only to publications and audiovisuals, provides coverage for digital products.

Finally, USDA proposed minor corrections and plain language updates

at Subpart C, related to intergovernmental review, which will ensure the currency and accessibility of information available to the public.

2 CFR part 416—General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments

Current Regulation: Part 416 provides special procurement provisions applicable to certain USDA entitlement programs.

Proposed Regulation: USDA proposes a technical correction to the citation to 2 CFR 200.101(f) in paragraphs (a) and (b); this citation currently refers only to parts 4 through 6 of that section but is proposed to refer to parts 4 through 7. In addition, USDA is proposing to remove the citation to 2 CFR 200.319(c) in paragraph (b) as a conforming update to adhere to the April 22, 2024 OMB updates to 2 CFR part 200. Finally, USDA is proposing plain language updates to this part.

Reasons: The proposed change to the citation to 2 CFR 200.101(f) in paragraphs (a) and (b) is a technical correction because the programs referred to at 2 CFR 200.101(f)(7) were previously covered by USDA's former regulations at 7 CFR part 3016 at time of initial implementation in 1988. When USDA initially adopted the Uniform Guidance in 2014 and removed 7 CFR part 3016, the citation included in the new 2 CFR part 416 should have included the programs at 2 CFR 200.101(f)(7). The change proposed in this NPRM simply corrects the citation and no change in program delivery or operation is anticipated.

Next, the proposed change at paragraph (b), to remove the citation to 2 CFR 200.319(c), is prompted by OMB's removal of that paragraph in the April 22, 2024 OMB updates to 2 CFR part 200.

Finally, plain language updates proposed at this section ensure the currency and accessibility of information available to the public.

2 CFR part 417—Nonprocurement Debarment and Suspension

Current Regulation: Part 417 adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by the same part.

Proposed Regulation: USDA proposes to remove language that is duplicative of that found at 2 CFR part 180. USDA proposes to make conforming updates to the sections which serve as the USDA supplement to 2 CFR part 180. Plain language updates and technical corrections are additionally proposed at this part.

Reasons: The removal of language which simply duplicates that found at 2 CFR part 180 streamlines USDA's regulations at this chapter overall. This proposed update will decrease applicant burden in understanding what nonprocurement debarment and suspension requirements may apply. The proposed updates to the remainder of the language of this part reflect required updates, including minor technical corrections and the update of references to the former EPLS system which was consolidated into *SAM.gov*. Technical corrections and plain language updates proposed at this section ensure the currency and accessibility of information available to the public.

2 CFR part 418—New Restrictions on Lobbying

Current Regulation: Part 418 provides the USDA adoption of the Byrd Anti-Lobbying Amendment common rule.

Proposed Regulation: Proposed changes to this section rescind Subpart F along with conforming updates to support its removal, as well as the rescission of Appendix B to Part 418. Plain language updates and technical corrections are additionally proposed at this part.

Reasons: Subpart F was removed from the OMB government-wide guidance on lobbying in 1996. Its removal clarifies expectations for USDA awarding agencies and reduces administrative burden. In addition, the removal of Appendix B to Part 418 ensures that USDA awarding agencies and the public may access only the most updated version of the form reproduced at that section (SF–LLL). The most current version of that document is approved by OMB and may be found on *Grants.gov*. Finally, technical corrections and plain language updates proposed at this section ensure the currency and accessibility of information available to the public.

2 CFR part 421—Requirements for Drug-Free Workplace (Financial Assistance)

Current Regulation: Part 421 adopts the OMB guidance in subparts A through F of 2 CFR part 182, as supplemented by the same part.

Proposed Regulation: USDA proposes technical corrections to citations at this section.

Reasons: Technical corrections at this section ensure the currency of information available to the public.

2 CFR part 422—Research Institutions Conducting USDA-Funded Extramural Research; Research Misconducts

Current Regulation: Part 422 provides the USDA required implementation of the Office of Science and Technology Policy (OSTP's) Federal Policy on Research Misconduct, which provides the USDA regulatory framework on research integrity, which includes provisions for inquiry, investigation, adjudication, and appeal of research misconduct.

Proposed Regulation: USDA proposes minor technical corrections, including fixing spelling errors, improving plain language, and updating citations. Information regarding the USDA OIG is proposed to conform with organizational updates of that office, as well as related contact information. In addition, USDA proposes to expand the definition of “research institution” to provide clarity on the application of the policy. Finally, USDA proposes to clarify that agency implementation procedures, which identify the administrative actions available to remedy a finding of research misconduct, will be made available on a public USDA website.

Reasons: Technical corrections and plain language updates proposed at this section ensure the currency and accessibility of information available to the public. Clarification of the definition of “research institution” will improve public understanding of the applicability of the policy. Requiring agency implementation procedures to be posted on a public website increases transparency of this policy to the public. 2 CFR part 423—[Reserved]

Current Regulation: Part 423 is currently reserved.

Proposed Regulation: USDA proposes to add a new part 423 that would supplement the disclosure requirements found at 43 U.S.C. 2808(b)(3) to require Federal financial instruments which involve the acquisition, storage, or distribution of geospatial data to include terms and conditions to require that recipients comply with law, regulation, and USDA policy.

Reasons: Requiring USDA awarding agencies to include award terms and conditions in each applicable financial instrument ensures a uniform application of the disclosure requirements required at 43 U.S.C. 2808(b)(3) across the landscape of USDA Federal financial assistance.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review” direct agencies to assess all costs and benefits of available regulatory alternatives and, if

regulation is necessary, to select regulatory approaches that maximize net benefits. The assessment should include potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this proposed rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed it.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988 on “Civil Justice Reform.” This proposed rule would not preempt state or local laws, regulations, or policies unless they represent an irreconcilable conflict with it.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, it is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

This proposed rule has been reviewed in compliance with the Paperwork Reduction Act (44 U.S.C. 3501–3520). It does not have any information collection requirements.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex,

gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or the USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects in Chapter IV

2 CFR Part 400

- Administration of Federal financial assistance
- Administrative practice and procedure
- Federal financial assistance programs

2 CFR Part 401

- Federal financial assistance programs
- Construction Industry

2 CFR Part 415

- Agriculture programs
- Administration of Federal financial assistance
- Administrative practice and procedure

2 CFR Part 416

- Agriculture programs

- Administration of Federal financial assistance
- Administrative practice and procedure
- Government procurement procedure

2 CFR Part 417

- Administrative practice and procedure; Grant programs; Loan programs; Reporting and recordkeeping requirements

2 CFR Part 418

- Lobbying procedures
- Administration of Federal financial assistance
- Government procurement procedure

2 CFR Part 421

- Administration of Federal financial assistance
- Administrative practice and procedure
- Drugs

2 CFR Part 422

- Agricultural research
- Administration of Federal financial assistance
- Administrative practice and procedure

2 CFR Part 423

- Reporting and recordkeeping requirements
- Administration of Federal financial assistance

For the reasons stated in the preamble, USDA proposes to amend 2 CFR Chapter IV to read as follows:

■ 1. Revise part 400 to read as follows:

PART 400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

400.0 Definitions.

400.1 Applicability.

400.2 Conflict of interest.

Authority: 5 U.S.C. 301; 2 CFR part 200.

§ 400.0 Definitions.

The definitions in this part are for terms used in this chapter, and to define for USDA terms present in 2 CFR Subtitle A but not defined in that subtitle. Different definitions may be found in Federal statutes, regulations, or other sources that apply more specifically to particular programs or activities. Where parts of this chapter provide alternate definitions than those in this part, those definitions take precedence over any definition in this part. For terms used in this chapter that

are not defined in this part, the definitions in 2 CFR part 200 apply. All terms not otherwise defined will use the dictionary definition.

Audiovisual means a product containing visual imagery or sound or both. Examples of audiovisuals are motion pictures, live or prerecorded radio or television programs, slide shows, filmstrips, audio recordings, and multimedia presentations.

Awarding official means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings.

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. For the purposes of 2 CFR part 184, construction also encompasses structures, facilities, and equipment incorporated into an infrastructure project regardless of whether they constitute real property.

Department means the U.S. Department of Agriculture.

Discretionary award means an award in which the Federal awarding agency, in keeping with specific statutory authority that enables the agency to exercise judgment (“discretion”), selects the recipient and/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected by a USDA awarding agency on a non-competitive basis exclusively under the conditions set forth at 2 CFR 415.1.

Eligible applications means those materials which have been submitted by a recipient for consideration for an award of Federal financial assistance and have been determined to comply with the minimum documentation and other requirements, which may be identified in respective notices of funding opportunities and applicable Federal statutes or regulations that apply more specifically to particular programs or activities.

Federal financial assistance support means the transfer of anything of value by a USDA awarding agency through a Federal financial assistance instrument as defined at 2 CFR part 200.1, inclusive

of Federally funded subawards and subcontracts under such instruments, to a recipient. Such support may be provided as a cash or in-kind contribution.

Geospatial data means information that is tied to a location on the Earth, including by identifying the geographic location and characteristics of natural or constructed features and boundaries on the Earth, and that is generally represented in vector datasets by points, lines, polygons, or other complex geographic features or phenomena; may be derived from, among other things, remote sensing, mapping, and surveying technologies; includes images and raster datasets, aerial photographs, and other forms of geospatial data or datasets in digitized or non-digitized form.

Information means any communication or representation of knowledge, such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

Information dissemination product means any recorded information, regardless of physical form or characteristics, disseminated to the public.

Maintenance means those activities conducted for the repair or upkeep of buildings, structures, facilities, and equipment which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition.

Production of an audiovisual means any steps that lead to a finished audiovisual, including but not limited to design, layout, script-writing, filming, editing, fabrication, sound recording or taping. The term does not include the placing of captions to make accessible films or videotapes not originally produced for use by individuals who are Deaf or hard of hearing.

Secretary means the Secretary of the U.S. Department of Agriculture.

USDA means the U.S. Department of Agriculture.

USDA awarding agency means any component agency or staff office of the U.S. Department of Agriculture which provides any Federal financial assistance to or executes a Federal financial assistance instrument with a recipient.

§ 400.1 Applicability.

This part adopts the OMB guidance in subparts A through F of 2 CFR part 200, as supplemented by this chapter, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements

for Federal awards. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this chapter.

§ 400.2 Conflict of interest.

(a) Each USDA awarding agency must establish conflict of interest policies for its Federal financial assistance actions. Each USDA awarding agency employee must comply with the requirements set forth at 5 CFR part 2635, as well as 5 CFR part 8301 where applicable, when the USDA employee takes any action related to Federal financial assistance.

(b) Recipients must disclose in writing any potential conflicts of interest to the USDA awarding agency or pass-through entity.

(1) Recipients must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees in the selection, award and administration of Federal awards. No employee, officer or agent may participate in the selection, award, or administration of a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a Federal award. The recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

(2) If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of the relationships with a parent company, affiliate, or subsidiary organization, the recipient is unable or appears to be unable to be impartial in conducting a Federal award action involving a related organization.

(3) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. Recipients are responsible for notifying the respective USDA awarding agency in writing of any conflicts of interest that may arise during the period of performance of an

award, including those which have been reported by subrecipients, no later than 5 calendar days following discovery. Upon receipt of such a disclosure, the respective USDA awarding agency must review and make a determination in writing if a potential or real conflict of interest exists and develop a plan for addressing or mitigating the issue, which may include remedies found at 2 CFR 200.339. USDA awarding agencies must make a determination within 30 calendar days of disclosure unless a longer period of time is necessary due to the complexity of the situation.

■ 2. Add part 401 to read as follows:

PART 401—BUY AMERICA PREFERENCES FOR INFRASTRUCTURE PROJECTS

Sec.

401.1 What does this part do?

401.2 Waivers.

Authority: 5 U.S.C. 301; Pub. L. 117–58, 135 Stat. 1294; 2 CFR part 184; 2 CFR part 200.

§ 401.1 What does this part do?

This part identifies the USDA policy for the implementation of waivers to the domestic content procurement preferences as required by 2 CFR 184.7(b).

§ 401.2 Waivers.

On its public website, USDA must maintain waiver request submission instructions and guidance on the format, contents, and supporting materials required for waiver requests by which:

(a) USDA awarding agencies may request waivers to the application of the Buy America Preference; and,

(b) Prime recipients and subrecipients may request project-specific waivers from the respective USDA awarding agencies to the application of the Buy America Preference.

■ 3. Revise part 415 to read as follows:

PART 415—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS

Subpart A—Application for Federal Assistance

Sec.

415.1 Administrative standards for discretionary grants and cooperative agreements.

Subpart B—Miscellaneous

Sec.

415.2 Acknowledgement of USDA Support on Information Dissemination Products.

Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

Sec.

415.3 Purpose.

- 415.4 Definitions.
- 415.5 Applicability.
- 415.6 Secretary's general responsibilities.
- 415.7 Federal interagency coordination.
- 415.8 State selection of programs and activities.
- 415.9 Communication with State and local elected officials.
- 415.10 State comments on proposed Federal financial assistance and direct Federal development.
- 415.11 Processing comments.
- 415.12 Accommodation of intergovernmental concerns.
- 415.13 Interstate situations.
- 415.14 Simplification, consolidation, or substitution of State plans.
- 415.15 Waivers.

Authority: 5 U.S.C. 301; 31 U.S.C. 901–903; 2 CFR part 200; 7 CFR 2.28.

Subpart A—Application for Federal Assistance

§ 415.1 Administrative standards for discretionary grants and cooperative agreements.

(a) All USDA awarding agencies must demonstrate a commitment to encouraging free and open competition in all discretionary grant and cooperative agreement funding opportunities. USDA awarding agencies must ensure that all eligible applications for discretionary grants and cooperative agreements receive fair and impartial review, be evaluated only on criteria as stated in the respective notice of funding opportunity, and that no applicant receive an unfair advantage.

(b) USDA awarding agencies must enter into discretionary grants and cooperative agreements only after competition. Exceptions to this requirement may only be made by USDA awarding agencies where expressly provided by statute, when directed by Congress, where the requirement is determined to be inconsistent with international assistance objectives of USDA, or as specified in paragraph (d) or as approved by the Secretary and OMB under paragraph (e). A USDA awarding agency's competitive award process must adhere to the following standards:

(1) All notices of funding opportunities for discretionary grants and cooperative agreements must be published on *Grants.gov* as described in 2 CFR 200.204(a). When notices of funding opportunities contain an information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or its implementing regulations at 5 CFR part 1320, USDA awarding agencies must seek and obtain OMB approval before collecting information from the public.

(i) Supplementary to the requirements at paragraph (b)(1), USDA awarding

agencies may make use of other methods of disseminating public information concerning notices of funding opportunities. In doing so, USDA awarding agencies must:

(A) Pursue the broadest dissemination of information concerning notices of funding opportunities in order to reach the greatest number and diversity of potential applicants.

(B) Avoid any appearance that an unfair advantage has been provided to any entity, inclusive of the memberships or networks of such entities, which may arise from the use of any dissemination method.

(C) Provide only public information concerning notices of funding opportunities.

(D) Seek the greatest cost savings to the Government, whenever possible.

(ii) Nothing in this part will be interpreted as to limit, impede, or otherwise prevent the attendance of any USDA awarding agency's staff, acting in their official capacity, at a conference, event, or similar activity, for the purposes of disseminating public information concerning notices of funding opportunities.

(2) Applications must be evaluated objectively by independent reviewers in accordance with evaluation criteria set forth in writing by the USDA awarding agency. USDA awarding agencies must establish written procedures to gain reasonable assurance that individuals selected to serve as independent reviewers are qualified to conduct any assigned review activity and that applications are scored by independent reviewers solely on the basis of criteria announced in the respective published notice of funding opportunity. Independent reviewers must make written comments or make a written determination of scoring, as appropriate, concerning each application to which they are assigned.

(i) Independent reviewers may be from the private or public sector, including another Federal agency, or within the awarding agency. Independent reviewers must not be any individual who holds or has been delegated approval or award authority for the applications being reviewed or components thereof.

(ii) Anyone who has or might appear to have a conflict of interest with any element of an application considered for selection or funding will be ineligible to serve as an independent reviewer. A conflict of interest might arise when the prospective independent reviewer, the reviewer's immediate family members, or the reviewer's partner, have been associated with the applicant or applicant organization within the past

two years as an owner, partner, officer, director, employee, or consultant; has any financial or other interest in or tangible personal benefit from the applicant or applicant organizations; or is negotiating for, or has any arrangement, concerning prospective employment.

(3) Notwithstanding paragraph (b), unless directed by Congress or authorized by statute, USDA awarding agencies may, but are not required to, review, evaluate for eligibility, or otherwise consider for funding any unsolicited application, proposal materials, ideas, pitches, or any other request for Federal funds provided by any entity for the purpose of obtaining Federal financial assistance.

(c) The final decision to award is at the discretion of the awarding official in each USDA awarding agency. The awarding official must consider the ranking, comments, and recommendations from the respective independent reviewers, and any other pertinent information before deciding which applications to approve and their order of approval. Any appeals by applicants regarding the awarding decision must be handled by the awarding agency using existing, written agency appeal procedures.

(d) The awarding official may make a determination that competition is not deemed appropriate for a particular transaction. Such determination must be made in writing on a case-by-case basis and be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Government and necessary to the accomplishment of the goals of USDA. Reasons for considering noncompetitive awards are:

(1) Nonmonetary awards of property or services.

(2) Awards of less than \$100,000.

(3) Awards to fund continuing work already started under a previous award for which competition for continued support would have a significant adverse effect on continuity or completion of the activity.

(4) Time constraints associated with a public health, safety, welfare, or national security requirement preclude competition.

(e) USDA awarding agencies may establish alternate exceptions from competition for discretionary awards. All such alternative exceptions will be subject to review and approval both by the Secretary and by OMB, pursuant to 2 CFR 200.102, and 2 CFR 200.107 when applicable, and publicly set forth in writing by the USDA awarding agency.

(f) All actions taken USDA awarding agencies for the purpose of accomplishing any element of Federal financial assistance programs, awards, and any related or subsequent transactions, must comply with the direction set forth in Office of Federal Procurement Policy (OFPP) Policy Letter 11–01 and successor policy regarding the performance of inherently governmental and critical functions.

Subpart B—Miscellaneous

§ 415.2 Acknowledgement of USDA Support on Information Dissemination Products.

Recipients must have an acknowledgement of USDA awarding agency support placed on any information dissemination products produced with any Federal financial assistance support, including those which report the results or, or describe, a Federal financial assistance-supported activity.

(a) Unless the provisions of the Federal financial assistance award make it apply, this requirement does not apply to:

(1) Audiovisuals produced as research instruments or for documenting experimentation or findings and not intended for presentation or distribution to the public.

(2) [Reserved]

(b) USDA awarding agencies must require award terms and conditions imposed for the specific purpose of complying with law, regulation, or USDA policy, related to the acknowledgement of USDA awarding agency Federal financial assistance support.

Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

§ 415.3 Purpose.

(a) The regulations in this part implement Executive Order 12372, “Intergovernmental Review of Federal Programs”, issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) The regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 415.4 Definitions.

As used in this part, the following definitions apply:

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled Intergovernmental Review of Federal Programs.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands.

§ 415.5 Applicability.

The Secretary must publish, no less than annually, a list of the Department’s programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. This list must be available on the USDA’s public website.

§ 415.6 Secretary’s general responsibilities.

(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials’ concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing Federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and

where permitted by law, encourages the substitution of State plans for Federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 415.7 Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 415.8 State selection of programs and activities.

(a) A State may select any program or activity published in the **Federal Register** or on *Grants.gov*, in accordance with § 415.5 for intergovernmental review under these regulations. Each State, before selecting programs and activities, must consult with local elected officials.

(b) Each State that adopts a process must notify the Secretary of the Department’s programs and activities selected for that process.

(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State must submit to the Secretary an assurance that the State has consulted with elected local officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a State’s process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

§ 415.9 Communication with State and local elected officials.

(a) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or an activity that is not covered under the State process.

(b) This notice may be made by publication in the **Federal Register** or other appropriate means, which the Department in its discretion deems appropriate.

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. Communications should be sent to:

(1) The Office of the Chief Financial Officer, Room 143–W, 1400 Independence Avenue SW, Washington, DC 20250, Attention: E.O. 12372; or,

(2) As identified on the USDA's public website, an email address for electronic communications.

§ 415.10 State comments on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompetitive continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompetitive continuation awards.

(b) This section also applies to comments in cases in which the review, coordination and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act must allow areawide agencies a 60-day opportunity for review and comment.

§ 415.11 Processing comments.

(a) The Secretary follows the procedures in § 415.12 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies; and

(2) That office or official transmits a State process recommendation for a program selected under § 415.8.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of

contact, all comments from State, areawide, regional and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 415.12.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 415.12, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

§ 415.12 Accommodation of intergovernmental concerns.

(a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either—

(1) Accepts the recommendations;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with a written explanation of the decision, as determined by the Secretary. The Secretary may also supplement the written explanation by also providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 415.13 Interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials in States which have adopted a process and which selected the Department's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding, pursuant to § 415.12, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 415.12 if a State process provides a State process recommendation to the Department through a single point of contact.

§ 415.14 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

(1) Simplify means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) Consolidate means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and the planning period for the consolidated plan.

(3) Substitute means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Secretary.

(c) The Secretary reviews each State plan a State has simplified, consolidated or substituted and accepts the plan only if its contents meet Federal requirements.

§ 415.15 Waivers.

In an emergency, the Secretary may waive any provision in Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities, 2 CFR 415.3 to 415.14.

■ 4. Revise part 416 to read as follows:

PART 416—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Sec.

416.1 Special procurement provisions.

Authority: 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

§ 416.1 Special procurement provisions.

(a) In order to ensure objective contractor performance and eliminate unfair competitive advantage, a prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, request for proposals, contract term and conditions or other documents for use by a State in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) must be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide States with specification information related to a State procurement under the USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) and still compete for the procurement if the State, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement.

(b) Procurements by States under USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) must be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences.

■ 5. Revise part 417 to read as follows:

PART 417—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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417.20 Does this part apply to me?

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417.865 How long may my debarment last?

417.870 When do I know if the USDA debarring official debars me?

Subpart I—Definitions

417.930 Debarring official (USDA supplement to government-wide definition at 2 CFR 180.930).

417.935 Disqualified (USDA supplement to government-wide definition at 2 CFR 180.935).

417.1010 Suspending official (USDA supplement to government-wide definition at 2 CFR 180.1010).

Subpart J—[Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 2209; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); Pub. L. 101–576, 104 Stat. 2838; E.O. 12549 (51 FR 6370, 3 CFR, 1986 Comp., p. 189); E.O. 12689 (54 FR 34131, 3 CFR, 1989 Comp., p. 235); 2 CFR part 180; 7 CFR 2.28.

§ 417.10 What does this part do?

This part adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the USDA policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this part. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, USDA policies and procedures are those in the OMB guidance. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (51 FR 6370, 3 CFR,

1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (54 FR 34131, 3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 417.20 Does this part apply to me?

Through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a:

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by §§ 417.215 and 417.220 of this part);

(b) Respondent in a USDA debarment and suspension action;

(c) USDA debarment or suspension official; or

(d) USDA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 417.30 What policies and procedures must I follow?

The USDA policies and procedures that you must follow are the policies and procedures specified in this regulation and each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by 2 CFR 180.220 as supplemented by § 417.220. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, USDA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 417.137 Who in the USDA may grant an exception to let an excluded person participate in a covered transaction?

Within the USDA, a debarring official may grant an exception to let an excluded person participate in a covered transaction as provided under 2 CFR 180.135.

Subpart B—Covered Transactions

§ 417.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in 2 CFR 180.970, are covered transactions unless listed in § 417.215.

§ 417.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) Transactions not covered. In addition to the nonprocurement transactions listed in 2 CFR 180.215, the following nonprocurement transactions are not covered transactions:

(1) An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.

(2) The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The “Export Act”), which prevents a debarred person from entering into any contract for the purchase of unprocessed timber from Federal lands. See 16 U.S.C. 620d(d)(1)(A).

(3) The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.

(4) The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.

(5) If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.

(6) The receipt of licenses, permits, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.

(7) Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

(8) Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program.

(9) Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program.

(b) Limited requirement to check *SAM.gov*. Notwithstanding the fact that transactions to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are not covered transactions, pursuant to paragraphs (a)(8) and (9) of this section, primary tier participants under these programs must

check *SAM.gov* prior to entering into any transaction with a person at the first lower tier and must not enter into such a transaction if the person is excluded or disqualified in *SAM.gov*.

(c) Exception. A cause for suspension or debarment under 2 CFR 180.700 or 2 CFR 180.800 may be based on the actions of a person with respect to a procurement or nonprocurement transaction under a USDA program even if such transaction has been excluded from covered transaction status by this section or § 417.220.

§ 417.220 Are any procurement contracts included as covered transactions?

In addition to the procurement contracts listed in 2 CFR 180.220, the following procurement contracts are covered transactions:

(a) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction covered under § 417.210, and the contract amount is expected to equal or exceed \$25,000.

(2) [Reserved]

(b) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program is not a covered transaction, notwithstanding the provisions in 2 CFR 180.220(a) and 2 CFR 180.220(b) and paragraph (a) of this section.

(c) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program is not a covered transaction, notwithstanding the provisions in 2 CFR 180.220(a) and 2 CFR 180.220(b) and paragraph (a) of this section.

(d) Notwithstanding the fact that procurement contracts to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are not covered transactions, pursuant to paragraph (b) and (c) of this section, primary tier participants under these programs must check *SAM.gov* prior to entering into any procurement contract that is expected to equal or exceed \$25,000 with a person at the first lower tier and must not enter into such a procurement contract if the person is excluded or disqualified in *SAM.gov*.

§ 417.221 How would the exclusions from coverage for the USDA’s foreign assistance programs apply?

The primary tier covered transaction would be the food aid grant agreement

entered into between USDA and a program participant, such as a U.S. private voluntary organization. USDA would have to check *SAM.gov* before entering into the food aid grant agreement to ensure that the U.S. private voluntary organization that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier might be a subrecipient agreement between the U.S. private voluntary organization and a foreign subrecipient of the commodities that were provided under the food aid grant agreement. Pursuant to § 417.215(a)(8), this nonprocurement transaction would not be a covered transaction. In addition, a transaction at the first lower tier might be a procurement contract entered into between the U.S. private voluntary organization and a foreign entity to provide supplies or services that are expected to equal or exceed \$25,000 in value and that are needed by such organization to implement activities under the food aid grant agreement. Pursuant to § 417.220(b), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. private voluntary organization would be prohibited from entering into, at the first lower tier, an agreement with a subrecipient or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears in *SAM.gov* as excluded or disqualified.

§ 417.222 How would the exclusions from coverage for the USDA’s export credit guarantee and direct credit programs apply?

(a) Export credit guarantee program. In the case of the export credit guarantee program, the primary tier covered transaction would be the guarantee issued by the USDA to a U.S. exporter. The U.S. exporter usually assigns the guarantee to a U.S. financial institution, and this would create another primary tier covered transaction between USDA and the U.S. financial institution. USDA would have to check the *SAM.gov* before issuing a guarantee or accepting a guarantee assignment to ensure that the U.S. exporter or financial institution that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier under the export credit guarantee program might be a payment obligation of a foreign bank to the U.S. exporter to pay on behalf of the importer for the exported U.S. commodities that are covered by the guarantee. Similarly, a transaction at the first lower tier might be a payment obligation of a foreign bank under an instrument, such as a

loan agreement or letter of credit, to the U.S. financial institution assigned the guarantee, which has paid the exporter for the exported U.S. commodities and, in so doing, issued a loan to the foreign bank, which the foreign bank is obligated to repay on deferred payment terms. Pursuant to § 417.215(a)(9), these nonprocurement transactions would not be covered transactions. In addition, a transaction at the first lower tier under the export credit guarantee program might be a procurement contract (*i.e.*, a contract for the purchase and sale of goods) that is expected to equal or exceed \$25,000 entered into between the U.S. exporter and the foreign importer for the U.S. commodities, the payment for which is covered by the guarantee. Pursuant to § 417.220(c), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. exporter or U.S. financial institution would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening purchaser) or foreign bank or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears on the *SAM.gov* as excluded or disqualified.

(b) Direct credit program. In the case of the direct credit program, the primary tier covered transaction would be the financing agreement between the USDA and the U.S. exporter. USDA purchases the exporter's account receivable in a particular transaction pursuant to the financing agreement. On occasion, such a transaction may contemplate a payment obligation of a U.S. or foreign bank to make the required payments. USDA would have to check *SAM.gov* before entering into a financing agreement or accepting such a payor to ensure that the U.S. exporter or the bank, if any, that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier might be a payment obligation of the importer to pay the exporter for the exported U.S. commodities that are covered by the financing agreement. Pursuant to § 417.215(a)(9), this nonprocurement transaction would not be a covered transaction. In addition, a transaction at the first lower tier might be a procurement contract that is expected to equal or exceed \$25,000 entered into between the U.S. exporter and the foreign importer for the U.S. commodities, the payment for which is covered by the financing agreement. Pursuant to § 417.220(c), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S.

exporter would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening purchaser) or bank, or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears in *SAM.gov* as excluded or disqualified.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 417.332 What methods must I use to pass down requirements to participants in lower-tier covered transactions with whom I intend to do business?

You as a participant must include a term or condition in lower tier covered transactions requiring lower tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by subpart C of this part.

Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions

§ 417.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower tier covered transactions.

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Suspension

§ 417.755 When will I know whether the USDA suspension is continued or terminated?

The record will remain open for the full 30 days, as called for in 2 CFR 180.725, even when you make a submission before the 30 days expire.

Subpart H—Debarment

§ 417.865 How long may my debarment last?

The Secretary must permanently debar from participation in USDA programs any individual, organization, corporation, or other entity convicted of a felony for knowingly defrauding the United States in connection with any program administered by USDA.

(a) Reduction. A debarment under this paragraph may be reduced by the

Secretary to a period of not less than 10 years.

(b) Exemption. A debarment under this paragraph will not apply with regard to participation in USDA domestic food assistance programs. For purposes of this paragraph, participation in a domestic food assistance program does not include acting as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC), or as a nonbeneficiary entity in any of the domestic food assistance programs. The programs include:

- (1) Special Nutrition Assistance Program, 7 U.S.C. 2011, *et seq.*;
- (2) Food Distribution Program on Indian Reservations, 7 U.S.C. 2013(b);
- (3) National School Lunch Program, 42 U.S.C. 1751, *et seq.*;
- (4) Summer Food Service Program for Children, 42 U.S.C. 1761; Child and Adult Care Food Program, 42 U.S.C. 1766;
- (5) Special Milk Program for Children, 42 U.S.C. 1772; School Breakfast Program, 42 U.S.C. 1773;
- (6) Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. 1786;
- (7) Commodity Supplemental Food Program, 42 U.S.C. 612c note;
- (8) WIC Farmers Market Nutrition Program, 42 U.S.C. 1786;
- (9) Senior Farmers' Market Nutrition Program, 7 U.S.C. 3007; and
- (10) Emergency Food Assistance Program, 7 U.S.C. 7501, *et seq.*

§ 417.870 When do I know if the USDA debarring official debars me?

The record will remain open for the full 30 days, as called for in 2 CFR 180.820, even when you make a submission before the 30 days expire.

Subpart I—Definitions

§ 417.930 Debarring official (USDA supplement to government-wide definition at 2 CFR 180.930).

The head of an organizational unit within USDA (*e.g.*, Administrator, Food and Nutrition Service), who has been delegated authority in 7 CFR part 2 to carry out a covered transaction, is delegated authority to act as the debarring official in connection with such transaction. This authority to act as a debarring official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a debarring official to the Deputy Chief for the National Forest System or an

Associate Deputy Chief for the National Forest System.

§ 417.935 Disqualified (USDA supplement to government-wide definition at 2 CFR 180.935).

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689), or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 3142);

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368), and E.O. 11738 (38 FR 25161, 3 CFR, 1973 Comp., p. 799);

(d) 515(h) of the Federal Crop Insurance Act (7 U.S.C. 1515(h));

(e) Section 12 of the Food and Nutrition Act of 2008 (7 U.S.C. 2021).

§ 417.1010 Suspending official (USDA supplement to government-wide definition at 2 CFR 180.1010).

The head of an organizational unit within USDA (e.g., Administrator, Food and Nutrition Service), who has been delegated authority in 7 CFR part 2 to carry out a covered transaction, is delegated authority to act as the suspending official in connection with such transaction. This authority to act as a suspending official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a suspending official to the Deputy Chief for the National Forest System or an Associate Deputy Chief for the National Forest System.

Subpart J—[Reserved]

■ 6. Revise and republish part 418 to read as follows:

PART 418—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.
418.100 Conditions on use of funds.
418.105 Definitions.
418.110 Certification and disclosure.

Subpart B—Activities by Own Employees

Sec.
418.200 Agency and legislative liaison.
418.205 Professional and technical services.
418.210 Reporting.

Subpart C—Activities by Other Than Own Employees

Sec.
418.300 Professional and technical services.

Subpart D—Penalties and Enforcement

Sec.
418.400 Penalties.
418.405 Penalty procedures.
418.410 Enforcement.

Subpart E—Exemptions

Sec.
418.500 Secretary of Defense.

Appendix A to Part 418—Certification Regarding Lobbying

Authority: 31 U.S.C. 1352; 5 U.S.C. 301; 2 CFR 200.450.

Subpart A—General

§ 418.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement must file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement must file with that agency a disclosure form, in the OMB-approved format, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan must file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any

agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan must file with that agency a disclosure form, in the OMB-approved format, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 418.105 Definitions.

For purposes of this part:

(a) Agency, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) Covered Federal action.

(1) Covered Federal action means any of the following Federal actions:

(i) The awarding of any Federal contract;

(ii) The making of any Federal grant;

(iii) The making of any Federal loan;

(iv) The entering into of any cooperative agreement; and,

(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) Federal contract means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) Federal cooperative agreement means a cooperative agreement entered into by an agency.

(e) Federal grant means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance,

or direct United States cash assistance to an individual.

(f) Federal loan means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) Indian tribe and tribal organization have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) Loan guarantee and loan insurance means an agency's guarantee or insurance of a loan made by a person.

(j) Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) Officer or employee of an agency includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under 5 U.S.C., including a position under a temporary appointment;

(2) A member of the uniformed services as defined in 37 U.S.C. 101(3);

(3) A special Government employee as defined in 18 U.S.C. 202; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

(l) Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in

cooperation with the Federal Government.

(n) Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) Recipient includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person will be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 418.110 Certification and disclosure.

(a) Each person must file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b)(1) Each person must file a certification, and a disclosure form, if required, upon receipt by such person of:

(i) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(ii) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

(2) Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person must file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person must file a certification, and a disclosure form, if required, to the next tier above who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement.

(e) All disclosure forms, but not certifications, must be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person must forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section will be treated as a material representation of fact upon which all receiving tiers must rely. All liability arising from an erroneous representation will be borne solely by the tier filing that representation and must not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure,

respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by 31 U.S.C. 1352.

(g) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C of this part.

Subpart B—Activities by Own Employees

§ 418.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 418.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 418.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 418.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, “professional and technical services” will be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or

regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 418.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 418.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 418.100(a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 418.110 (a) and (b) regarding filing a disclosure form by each person, if required, will not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, “professional and technical services” will be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example,

communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 418.400 Penalties.

(a) Any person who makes an expenditure prohibited herein will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (in the OMB-approved format) to be filed or amended if required herein, will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency will consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in

business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section will be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons will be subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 418.405 Penalty procedures.

Agencies must impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804 through 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 418.410 Enforcement.

The head of each agency must take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§ 418.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary must transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Appendix A to Part 418—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any

Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned must complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

PART 421—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

■ 7. The authority citation for part 421 continues to read as follows:

Authority: 41 U.S.C. 701–707

■ 8. Amend § 421.10 by revising the introductory text and paragraph (b) as follows:

§ 421.10 What does this part do?

This part requires that the award and administration of USDA grants and

cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101–8106, as amended, hereafter referred to as “the Act”) that applies to grants. It thereby—

* * * * *

(b) Establishes USDA policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 8106 for Governmentwide implementing regulations.

* * * * *

■ 9. Revise § 421.400 to read as follows:

§ 421.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 421, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 8101–8106).

■ 10. Revise and republish part 422 to read as follows:

PART 422—RESEARCH INSTITUTIONS CONDUCTING USDA-FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT

Sec.

422.1 Definitions.

422.2 Procedures.

422.3 Inquiry, investigation, and adjudication.

422.4 USDA Panel to determine appropriateness of research misconduct policy.

422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

422.6 Notification of USDA of allegations of research misconduct.

422.7 Notification of ARIIO during an inquiry or investigation.

422.8 Communication of research misconduct policies and procedures.

422.9 Documents required.

422.10 Reporting to USDA.

422.11 Research records and evidence.

422.12 Remedies for noncompliance.

422.13 Appeals.

422.14 Relationship to other requirements.

Authority: 5 U.S.C. 301; 7 CFR 2610.1(c); Federal Policy on Research Misconduct (65 FR 76260)

§ 422.1 Definitions.

The following definitions apply to this part:

Adjudication. The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined. Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

Agency Research Integrity Officer (ARIO). The individual appointed by a USDA agency that conducts research and who is responsible for:

(1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;

(2) Informing OIG and the USDA RIO and the research institution associated with the alleged research misconduct, of allegations of research misconduct in the event it is reported to the USDA agency;

(3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;

(4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct is alleged to have occurred, and with the USDA RIO;

(5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;

(6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an organizational level that allows an independent, unbiased, and equitable process;

(7) Immediately notifying OIG, the USDA RIO, and the applicable research institution if:

- (i) Public health or safety is at risk;
- (ii) USDA's resources, reputation, or other interests need protecting;
- (iii) Research activities should be suspended;

(iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(vi) The scientific community or the public should be informed; or

(vii) Behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;

(8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings;

(9) Other duties relating to research misconduct proceedings as assigned.

Allegation. A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

Applied research. Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

Assistant Inspector General for Investigations. The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through OIG's national and regional investigative offices.

Basic research. Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

Extramural research. Research conducted by any research institution or entity other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

Fabrication. Making up data or results and recording or reporting them.

Falsification. Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of research misconduct. The conclusion, proven by a preponderance of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

Inquiry. The stage in the response to an allegation of research misconduct when an assessment is made to

determine whether the allegation has substance and whether an investigation is warranted.

Intramural research. Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

Investigation. The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

Office of Inspector General (OIG). The Office of Inspector General of the United States Department of Agriculture.

Office of Science and Technology Policy (OSTP). The Office of Science and Technology Policy of the Executive Office of the President.

Plagiarism. The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Research. All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

Research institution. All organizations using Federal funds for research, including, for example, colleges and universities, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes. Activities which meet this definition constitute research for purposes of this part, whether or not they are conducted or supported under a program which is considered "research" for other purposes. For example, some demonstration and service programs may include research/scientific activities.

Research misconduct. Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

Research record. The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, research records (including data, notes, journals, laboratory records (both

physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

USDA. United States Department of Agriculture.

USDA Research Integrity Officer (USDA RIO). The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

(1) Overseeing USDA agency responses to allegations of research misconduct;

(2) Ensuring that agency research misconduct procedures are consistent with this part;

(3) Receiving and assigning allegations of research misconduct reported by the public;

(4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;

(5) Monitoring the progress of all research misconduct cases; and

(6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

§ 422.2 Procedures.

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

(a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;

(b) Objectivity;

(c) Due process;

(d) Whistleblower protection;

(e) Confidentiality. To the extent possible and consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and complainants is limited to those who need to know; and

(f) Timely resolution.

§ 422.3 Inquiry, investigation, and adjudication.

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines that the allegation or apparent instance of research misconduct has substance. The

responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

(a) Initiate an inquiry into any suspected or alleged research misconduct;

(b) Conduct a subsequent investigation, if warranted;

(c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and

(d) Take action to ensure the following:

(1) The integrity of research;

(2) The rights and interests of the subject of the investigation and the public are protected;

(3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and

(4) Appropriate safeguards for subjects of allegations, as well as complainants (see § 422.6). These safeguards should include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct, if any.

§ 422.4 USDA Panel to determine appropriateness of research misconduct policy.

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIO its policies and procedures related to research misconduct at the institution. The research institution has the option of providing either a written copy of such policies and procedures or a website address where such policies and procedures can be accessed. The ARIO to whom the policies and procedures were made available must convene a panel comprised of the USDA RIO and ARIOs from the Forest Service, the Agricultural Research Service, and the National Institute of Food and Agriculture. The Panel will review the research institution's policies and procedures for compliance with the OSTP Policy and render a decision regarding the research institution's ability to adequately resolve research

misconduct allegations. The ARIО will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient. If the Panel determines that the research institution does not have sufficient policies and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the research institution is in any way unfit or unprepared to handle the inquiry, investigation, and adjudication in a prompt, unbiased, fair, and independent manner, the ARIО will inform the research institution in writing of the Panel's decision. An appropriate USDA agency, as determined by the Panel, will then conduct the inquiry, investigation, and adjudication of research misconduct in accordance with this part. If an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not), it is presumed that the Federal research institution has research misconduct procedures consistent with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal agency's research misconduct procedures, should there be any question whether the agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

§ 422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

(a) USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation. This may be necessary if the USDA RIO or ARIО believes, using sound discretion, that despite the Panel's finding that the research institution in question had appropriate and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

- (1) Did not adhere to its own research misconduct procedures;
- (2) Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner; or
- (3) Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner.

(b) Additionally, USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a

research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation for any other reason that the USDA RIO or ARIО considers it appropriate to conduct research misconduct proceedings in lieu of the research institution's conducting the extramural research at issue. This right is subject to paragraph (c) of this section.

(c) In cases where the USDA RIO or ARIО believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication subsequent to the proceedings of the research institution related to the same allegation, the USDA RIO or ARIО will reconvene the Panel, which will determine whether it is appropriate for the relevant USDA agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA agency to conduct the proceedings, the ARIО will immediately notify the research institution in question. The research institution must then promptly provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA agency will conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

§ 422.6 Notification of USDA of allegations of research misconduct.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify OIG and the USDA RIO of all allegations of research misconduct or violations of Federal criminal statutes involving USDA funds when the institution inquiry into the allegation warrants the institution moving on to an investigation.

(b) Individuals at research institutions who suspect research misconduct at the institution should report allegations in accordance with the institution's research misconduct policies and procedures. Anyone else who suspects that researchers or research institutions performing Federally funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG.

(1) OIG has established a hotline for USDA employees and the general public to report fraud, waste, abuse, and mismanagement in USDA programs including allegations of research misconduct. Complaints, which may be submitted anonymously, must be filed with the OIG by submitting a complaint

via the hotline on OIG's public website, sending a fax, or writing a letter.

(i) The OIG hotline may be accessed at <https://usda.oig.oversight.gov/hotline>.

(ii) Complainants who submit to the hotline on OIG's public website and who wish to provide additional documentation may fax them to (202) 690-2474.

(iii) Letters may be mailed to: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026-3399.

(2) The USDA RIO may be reached at: USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250

Telephone: (202) 690-0745

Email: researchintegrity@usda.gov

(c) To the extent known, the following details should be included in any formal allegation:

(1) The name of the research projects involved, the nature of the alleged misconduct, and the names of the individual or individuals alleged to be involved in the misconduct;

(2) The source or sources of funding for the research project or research projects involved in the alleged misconduct;

(3) Important dates;

(4) Any documentation that bears upon the allegation; and

(5) Any other potentially relevant information.

(d) Safeguards for complainants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as complainants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for complainants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith. The identity of complainants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

§ 422.7 Notification of ARIО during an inquiry or investigation.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify the ARIО should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) The resources, reputation, or other interests of USDA are in need of protection;

(3) Research activities should be suspended;

(4) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(5) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(6) The scientific community or the public should be informed; or

(7) There is reasonable indication of possible violations of civil or criminal law.

(b) If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the institution must promptly notify the ARIO.

§ 422.8 Communication of research misconduct policies and procedures.

Institutions that conduct USDA-funded extramural research are to maintain and effectively communicate to their staff policies and procedures relating to research misconduct, including the guidelines in this part. The institution is to inform their researchers and staff members who conduct USDA-funded extramural research when and under what circumstances USDA is to be notified of allegations of research misconduct, and when and under what circumstances USDA is to be updated on research misconduct proceedings.

§ 422.9 Documents required.

(a) A research institution that conducts USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

(1) A written statement describing the original allegation;

(2) A copy of the formal notification presented to the subject of the allegation;

(3) A written report describing the inquiry stage and its outcome including copies of all supporting documentation;

(4) A description of the methods and procedures used to gather and evaluate information pertinent to the alleged misconduct during inquiry and investigation stages;

(5) A written report of the investigation, including the evidentiary record and supporting documentation;

(6) A written statement of the findings; and

(7) If applicable, a statement of recommended corrective actions, and any response to such a statement by the subject of the original allegation, and/or other interested parties, including any corrective action plan.

(b) The research institution must retain the documents specified in paragraph (a) of this section for at least 3 years following the final adjudication of the alleged research misconduct.

§ 422.10 Reporting to USDA.

Following completion of an investigation into allegations of research misconduct, the institution conducting extramural research must provide to the ARIO a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, the adjudicating official's determination, the institution's corrective action taken or planned, and the written response of the individual who is the subject of the allegation to any recommendations.

§ 422.11 Research records and evidence.

(a) A research institution that conducts extramural research supported by USDA funds, as the responsible legal entity for the USDA-supported research, has a continuing obligation to create and maintain adequate records (including documents and other evidentiary matter) as may be required by any subsequent inquiry, investigation, finding, adjudication, or other proceeding.

(b) Whenever an investigation is initiated, the research institution must promptly take all reasonable and practical steps to obtain custody of all relevant research records and evidence as may be necessary to conduct the research misconduct proceedings. This must be accomplished before the research institution notifies the researcher/respondent of the allegation, or immediately thereafter.

(c) The original research records and evidence taken into custody by the research institution must be inventoried and stored in a secure place and manner. Research records involving raw data must include the devices or instruments on which they reside. However, if deemed appropriate by the research institution or investigator, research data or records that reside on or in instruments or devices may be copied and removed from those instruments or devices as long as the copies are complete, accurate, and have substantially equivalent evidentiary value as the data or records have when the data or records reside on the instruments or devices. Such copies of data or records must be made by a disinterested, qualified technician and not by the subject of the original allegation or other interested parties. When the relevant data or records have been removed from the devices or

instruments, the instruments or devices need not be maintained as evidence.

§ 422.12 Remedies for noncompliance.

USDA agencies' implementation procedures identify the administrative actions available to remedy a finding of research misconduct. Such actions may include the recovery of funds, correction of the research record, debarment of the researcher(s) that engaged in the research misconduct, proper attribution, or any other action deemed appropriate to remedy the instance(s) of research misconduct. The agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowingly conducted, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare. In determining the appropriate administrative action, the appropriate agency must impose a remedy that is commensurate with the infraction as described in the finding of research misconduct.

§ 422.13 Appeals.

(a) If USDA relied on an institution to conduct an inquiry, investigation, and adjudication, the alleged person(s) should first follow the institution's appeal policy and procedures.

(b) USDA agencies' implementation procedures, which must be made available on a designated USDA public website, identify the appeal process when a finding of research misconduct is elevated to the agency.

§ 422.14 Relationship to other requirements.

Some of the research covered by this part also may be subject to regulations of other governmental agencies (e.g., a university that receives funding from a USDA agency and also under a grant from another Federal agency). If more than one agency of the Federal Government has jurisdiction, USDA will cooperate with the other agency(ies) in designating a lead agency. When USDA is not the lead agency, it will rely on the lead agency following its policies and procedures in determining whether there is a finding of research misconduct. Further, USDA may, in consultation with the lead agency, take action to protect the health and safety of the public, to promote the integrity of the USDA-supported research and research process, or to conserve public funds. When appropriate, USDA will seek to resolve allegations jointly with the other agency or agencies.

■ 11. Add part 423 to read as follows:

PART 423—GEOSPATIAL DATA MANAGEMENT AND STANDARDS FOR FEDERAL FINANCIAL ASSISTANCE AWARDS

Sec.

423.1 What does this part do?

423.2 Disclosure of geospatial investments.

Authority: 43 U.S.C. Ch. 46; 5 U.S.C. 301

§ 423.1 What does this part do?

This part implements the requirements at 43 U.S.C. 2808(b)(3) which pertain to the disclosure of USDA Federal financial assistance that involves geospatial data, as supplemented by this part.

§ 423.2 Disclosure of geospatial investments.

USDA awarding agencies must ensure that all Federal financial assistance instruments which involve the acquisition, storage, or distribution of geospatial data comply with USDA policy. For all such instruments, USDA awarding agencies must require award terms and conditions necessary for the specific purpose of complying with law, regulation, and USDA policy.

Lynn Moaney,

Deputy Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. 2024–13845 Filed 6–28–24; 8:45 am]

BILLING CODE 3410-KS-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1701; Project Identifier MCAI–2024–00153–T]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and A350–1041 airplanes. This proposed AD was prompted by a report the thrust reverser and pylon thermal blankets were found damaged due to air leaking from the pre-cooler exchanger (PCE). This proposed AD would require repetitively testing the PCE for air leaks and reporting the results, and depending on findings, replacing the PCE and inspecting the thermal blankets

for damage, as 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 August 15, 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](https://www.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](https://www.regulations.gov) under Docket No. FAA–2024–1701; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material, 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 this material on the EASA website ad.easa.europa.eu. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1701.

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

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email dat.v.le@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–2024–1701; Project Identifier MCAI–2024–00153–T” at the beginning

of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend 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](https://www.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 Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email dat.v.le@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2024–0058R1, dated April 16, 2024 (EASA AD 2024–0058R1) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and A350–1041 airplanes. The MCAI states that during a maintenance inspection, thrust reverser and pylon thermal blankets were found damaged due to air leaking from the PCE. This condition, if not detected and corrected, could result in thermal blanket damage that, if combined with an independent event of engine fire, could lead to a temporary uncontrolled fire.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–1701.

Related Material Under 1 CFR Part 51

EASA AD 2024–0058R1 specifies a repetitive air leak test of the PCE and reporting the results. If a leak is detected, EASA AD 2024–0058R1 specifies to replace the PCE and visually inspect the thrust reverser and pylon thermal blankets and replace if damaged. EASA AD 2024–0058R1 also requires performing an air leak test on any newly installed PCE.

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 ADDRESSES section.

FAA’s Determination

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

is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2024–0058R1 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

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 2024–0058R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0058R1 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 2024–0058R1 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 2024–0058R1. Service information required by EASA AD 2024–0058R1 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–1701 after the FAA final rule is published.

Interim Action

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

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 32 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × \$85 per hour = \$255	\$0	\$255	\$8,160

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 24 work-hours × \$85 per hour = Up to \$2,040	Up to \$18,844	Up to \$20,884.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of

information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the

national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2024–1701; Project Identifier MCAI–2024–00153–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 15, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and A350–1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by a report the thrust reverser and pylon thermal blankets were found damaged due to air leaking from the pre-cooler exchanger (PCE). The FAA is issuing this AD to address the PCE leaking air. The unsafe condition, if not addressed, could result in thermal blanket damage that, if combined with an independent event of engine fire, could lead to a temporary uncontrolled fire.

(f) Compliance

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

(g) Requirements

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 2024–0058R1, dated April 16, 2024 (EASA AD 2024–0058R1).

(h) Exceptions to EASA AD 2024–0058R1

(1) Where EASA AD 2024–0058R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (4) of EASA AD 2024–0058R1 specifies “if any discrepancy is detected, before next flight, contact Airbus for approved instructions and accomplish those instructions accordingly,” this AD requires replacing that text with “if any discrepancy is detected, the discrepancy must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.”

(3) Paragraph (6) of EASA AD 2024–0058R1 specifies to report air leak test results to Airbus within a certain compliance time. For this AD, report test results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the test was done on or after the effective date of this AD: Submit the report within 30 days after the test.

(ii) If the test was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(4) This AD does not adopt the “Remarks” section of EASA AD 2024–0058R1.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA DOA. If approved by the DOA, the

approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any material referenced in EASA AD 2024–0058R1 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7317; email dat.v.le@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2024–0058R1, dated April 16, 2024.

(ii) [Reserved]

(3) For EASA AD 2024–0058R1, 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 this EASA AD on the EASA website ad.easa.europa.eu.

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

(5) You may view this 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 June 25, 2024.

Suzanne Masterson,

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

[FR Doc. 2024–14437 Filed 6–28–24; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2023–0468; FRL–12057–01–R2]

Air Plan Approval; New Jersey; Interstate Transport Requirements for the 2010 1-Hour Sulfur Dioxide Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the portions of a State Implementation Plan (SIP) submittal from the State of New Jersey demonstrating that the State satisfies the infrastructure requirements of the Clean Air Act (CAA) addressing interstate transport of pollution with respect to the 2010 1-hour Sulfur Dioxide (SO₂) primary National Ambient Air Quality Standard (NAAQS). This action is being taken in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before July 31, 2024.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2023–0468 at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy,

information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Robert Rutherford, Environmental Protection Agency, Air Programs Branch, Region 2, 290 Broadway, New York, New York 10007–1866, at (212) 637–3712, or by email at rutherford.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of the SIP Revision and the EPA's Analysis
- III. Environmental Justice Considerations
- IV. The EPA's Proposed Action
- V. Statutory and Executive Order Reviews

I. Background

On June 2, 2010, the EPA signed a revised primary NAAQS for SO₂ at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations (hereafter “the 2010 1-hour SO₂ NAAQS”).¹ At the same time, the EPA also revoked the previous 24-hour and annual primary SO₂ standards. The previous SO₂ air quality standards were set in 1971, including a 24-hour average primary standard at 140 ppb and an annual average primary standard at 30 ppb.

Current scientific evidence links short-term exposures to SO₂, ranging from five minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms. These effects are particularly important for asthmatics at elevated ventilation rates (e.g., while exercising or playing). Studies also show a connection between short-term exposure and increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk populations including children, the elderly, and asthmatics.

Pursuant to section 110(a)(1) of the CAA, States are required to submit SIPs to meet the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. The EPA has historically referred to these SIPs as “infrastructure SIPs.” Section 110(a)(2) requires States to address basic SIP elements in their infrastructure SIPs to assure attainment and maintenance of the NAAQS—such as requirements for monitoring, basic program requirements, and legal authority.

¹ See 75 FR 35520 (June 22, 2010). See 40 CFR 50.11.

Section 110(a) imposes the obligation upon States to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances of each NAAQS and what is in each State's existing SIP. In particular, the data and analytical tools available at the time the State develops and submits the SIP revision for a new or revised NAAQS affect the content of the submission.

Section 110(a)(2)(D)(i)(I) of the CAA requires a State's SIP to include adequate provisions prohibiting any emissions activity in the State that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any other State. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the “good neighbor” provision of the CAA.

II. Summary of the SIP Revision and the EPA's Analysis

On October 17, 2014, the New Jersey Department of Environmental Protection (NJDEP) submitted a revision to its SIP to address requirements under section 110(a)(2) of the CAA (the infrastructure requirements) related to the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, 2006 PM₁₀, 2011 CO, and 2012 PM_{2.5} NAAQS.

The EPA finalized actions on all applicable section 110(a)(2) elements of the October 17, 2014 submittal with the exception of 110(a)(2)(D)(i)(I) for the 2010 1-hour SO₂ NAAQS.² Further information regarding those actions can be found in the Technical Support Document (TSD) for this action, which is included in the docket for this rulemaking.

This proposed rulemaking action is addressing the portions of New Jersey's infrastructure submittal for the 2010 1-hour SO₂ NAAQS that pertain to the “good neighbor” provision of the CAA.

In their SIP submission to the EPA, NJDEP discussed how they have addressed the interstate transport requirements of CAA 110(a)(2)(D)(i)(I) through their state-adopted rules and enforceable consent decrees, which control sources that impact air quality in neighboring States. NJDEP emphasized that their rules do not hinder other States' air quality standards, and their emissions regulations are stricter than Federal and nearby State rules. New Jersey

² See 81 FR 64070 (September 19, 2016), 83 FR 24661 (May 30, 2018), 83 FR 40151 (August 14, 2018), and 85 FR 28883 (May 14, 2020).

highlighted its existing SIP-approved regulations and other federally enforceable control measures, including power plant consent decrees and low sulfur fuel requirements for distillate and residual fuels (N.J.A.C. 7:27–9) that have reduced SO₂ emissions that may be transported to other States.

For the reasons explained in the accompanying TSD in the docket, EPA proposes to determine that New Jersey's SIP is adequate to prevent sources in New Jersey from significantly contributing to nonattainment or interfering with maintenance in another State with respect to the 2010 1-hour SO₂ NAAQS. This determination is based on a weight of evidence analysis that takes into account the following considerations: SO₂ emissions statewide have declined significantly from 2014 to 2022; the absence of nearby SO₂ nonattainment areas in neighboring States or uncharacterized air quality near New Jersey point sources; SO₂ ambient air quality data far below the SO₂ NAAQS and exhibiting downward trends or remaining stable; EPA's impact assessment that shows that New Jersey sources within 50 kilometers of New Jersey's borders are unlikely to significantly contribute to nonattainment or interfere with maintenance in any nearby States based on emission trends, wind patterns, air monitoring, and modeling data; and New Jersey's existing control measures, which ensure that SO₂ emissions will continue to be effectively controlled for existing and new sources or modifications.

A detailed summary of EPA's review and rationale for the proposed approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO₂ may be found in the TSD.

III. Environmental Justice Considerations

New Jersey provided a supplement to the SIP submission being proposed for approval with this rulemaking on May 16, 2023. The supplemental submission briefed the EPA on Environmental Justice (EJ) considerations within New Jersey by detailing the State's programs and initiatives addressing the needs of communities with EJ concerns that have been ongoing since 1998. Although New Jersey included environmental justice considerations as part of its SIP submittal, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation.

In its supplement, New Jersey discussed how the State has been addressing the needs of communities with EJ concerns since 1998, including assisting in the creation of the

Environmental Equity Task Force, which later evolved into the Environmental Justice Advisory Council (EJAC). EJAC and its predecessor have held regular meetings that include EJ advocates and the New Jersey Department of Environmental Protection (NJDEP) to discuss and address issues of concern.

New Jersey has also noted that the State has implemented numerous initiatives, collaborations, Administrative Orders and Executive Orders to address the needs and concerns of overburdened communities. New Jersey provided a timeline of the EJ actions implemented by the State, both prior to the SIP submittal on October 17, 2014, and subsequent to it, to note its continued attention to environmental justice in the state.

New Jersey's Administrative Orders (AO) and Executive Orders (E.O.) include the State's first EJ E.O. issued by Governor James E. McGreevey in 2004 (E.O. No. 96), an EJ E.O. issued by Governor Jon Corzine in 2009 (E.O. No. 131), an EJ AO issued by NJDEP Commissioner Bob Martin in 2016 (AO 2016–08) and an EJ E.O. issued by Governor Phil Murphy in 2018 (E.O. No. 23). Notably, U.S. Senator for New Jersey, Cory Booker, introduced the first Federal EJ bill in 2017 (S.1996—Environmental Justice Act of 2017).

Additionally, New Jersey also created the “What's In My Community?”³ tool, a GIS-mapping web application that allows a user to see the air permits issued in their community. The tool also identifies overburdened communities, schools, hospitals, and emergency services. The public users can also see measurements from air monitors and generate a report when using the tool.

The EPA has reviewed this material but has determined that conducting a comprehensive EJ analysis is not necessary in the context of this SIP submission for interstate transport for the 2010 1-hour SO₂ NAAQS, as the CAA and its applicable implementing regulations neither prohibit nor require such an evaluation of EJ in relation to the relevant requirements. Additionally, there is no evidence suggesting that this action contradicts the goals of E.O. 12898 or that it will disproportionately harm any specific group or have severe health or environmental impacts.

However, the EPA expects that this action, which assesses whether New Jersey's SIP adequately addresses the

interstate transport of air pollution that affects downwind States' ability to attain and maintain the 2010 1-hour SO₂ NAAQS, will generally have a neutral impact on all populations, including communities of color and low-income groups. At the very least, it will not worsen existing air quality standards.

In summary, the EPA concludes, for informational purposes only, that this proposed rule will not disproportionately harm communities with environmental justice concerns. New Jersey did evaluate EJ considerations voluntarily in its SIP submission, but the EPA's assessment of these considerations is provided for context, not as the basis for the action. The EPA is taking action under the CAA independently of the State's EJ assessment.

IV. The EPA's Proposed Action

The EPA is proposing to approve the portions of New Jersey's SIP submittal addressing interstate transport for the 2010 1-hour SO₂ NAAQS as meeting the requirements in section 110(a)(2)(D)(i)(I) of the CAA. The EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

³ Access the mapping application for locating facilities with an air permit registered with NJDEP's Division of Air Quality from their website at <https://njdep.maps.arcgis.com/app4s/webappviewer/index.html?id=76194937cbbe46b1ab9a9ec37c7d709b>.

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

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

The NJDEP evaluated environmental justice as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA’s evaluation of the NJDEP’s environmental justice considerations is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action

under the CAA on bases independent of New Jersey’s evaluation of environmental justice. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2024–14268 Filed 6–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2024–0059; FRL–11682–05–OCSPJ]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (May 2024)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency’s receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before July 31, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0059, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Dan Rosenblatt, Registration Division (RD) (7505T), main telephone number: (202) 566–2875, email address: RDfRNotices@epa.gov. The mailing address for each contact person is Office

of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person’s name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on

any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at <https://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Notice of Filing—Amended Tolerance Exemptions for Inerts (Except PIPS)

PP IN-11865. EPA-HQ-OPP-2024-0190. RegGuide (P.O. Box 2226, 509 Tower Valley Drive, Hillsboro, MO 63050) on behalf of Stratacor, Inc. (6 Christopher Court, Novato, CA 94947), requests to amend an exemption from the requirement of a tolerance for residues of choline chloride (CAS Reg. No. 67-48-1) by adding its use as an inert ingredient (adjuvant) in pesticide

formulations under 40 CFR 180.930. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

B. Notice of Filing—Amended Tolerances for Non-Inerts

PP 3E9077. EPA-HQ-OPP-2023-0554. The Interregional Research Project Number 4 (IR-4), IR-4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 27606, requests to amend 40 CFR 180.462 by removing the established tolerances for the residues of pyridate including its metabolites and degradates, O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate, and its metabolites, 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-4-ol, calculated as the stoichiometric equivalent of pyridate, in or on the commodities: Brassica, head and stem, subgroup 5A at 0.03 parts per million (ppm); cabbage at 0.03 ppm; corn, field, grain at 0.03 ppm; corn, pop, grain at 0.03 ppm; peppermint, tops at 0.20 ppm; and spearmint, tops at 0.20 ppm. *Contact:* RD.

C. Notice of Filing—New Tolerances for Non-Inerts

1. *PP 2F8995.* EPA-HQ-OPP-2022-0594. Nufarm Limited, C/O Nufarm Americas, Inc. 4020 Aerial Center Parkway, Suite 101 Morrisville, NC 27560, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide dichlorprop-P, (R)-2-(2,4-dichlorophenoxy)propionic acid in or on Amaranth, grain, forage at 50 ppm; amaranth, grain, hay at 80 ppm; amaranth, grain, straw at 40 ppm; amaranth, purple, forage at 50 ppm; amaranth, purple, hay at 80 ppm; amaranth, purple, straw at 40 ppm; baby corn, forage at 0.06 ppm; baby corn, stover at 0.15 ppm; barley, hay at 40 ppm; barley, straw at 15 ppm; barley, subgroup 15-22B at 0.3 ppm; buckwheat, hay at 40 ppm; buckwheat, straw at 15 ppm; buckwheat, tartary, hay at 40 ppm; buckwheat, tartary, straw at 15 ppm; canarygrass, annual, hay at 40 ppm; canarygrass, annual, straw at 15 ppm; cañihua, forage at 50 ppm; cañihua, hay at 80 ppm; cañihua, straw at 40 ppm; chia, forage at 50 ppm; chia, hay at 80 ppm; chia, straw at 40 ppm; corn, field, forage at 0.01 ppm; corn, field, stover at 0.01 ppm; corn, field, subgroup 15-22C at 0.01 ppm; corn, pop, stover at 0.01 ppm; corn, sweet, forage at 0.06 ppm; corn, sweet, stover at 0.15 ppm; corn, sweet, subgroup 15-22D at 0.01 ppm; cram-cram, forage at 50 ppm; cram-cram, hay

at 80 ppm; cram-cram, straw at 40 ppm; fonio, black, forage at 0.02 ppm; fonio, black, stover at 0.09 ppm; fonio, white, forage at 0.02 ppm; fonio, white, stover at 0.09 ppm; huauzontle, grain, forage at 50 ppm; huauzontle, grain, hay at 80 ppm; huauzontle, grain, straw at 40 ppm; inca wheat, forage at 50 ppm; inca wheat, hay at 80 ppm; inca wheat, straw at 40 ppm; job's tears, forage at 0.02 ppm; job's tears, stover at 0.09 ppm; millet, barnyard, forage at 0.02 ppm; millet, barnyard, hay at 0.02 ppm; millet, barnyard, straw at 0.09 ppm; millet, finger, forage at 0.02 ppm; millet, finger, hay at 0.02 ppm; millet, finger, straw at 0.09 ppm; millet, foxtail, forage at 0.02 ppm; millet, foxtail, hay at 0.02 ppm; millet, foxtail, straw at 0.09 ppm; millet, little, forage at 0.02 ppm; millet, little, hay at 0.02 ppm; millet, little, straw at 0.09 ppm; millet, pearl, forage at 0.02 ppm; millet, pearl, hay at 0.02 ppm; millet, pearl, straw at 0.09 ppm; millet, proso, forage at 0.02 ppm; millet, proso, hay at 0.02 ppm; millet, proso, straw at 0.09 ppm; oat, forage at 40 ppm; oat, hay at 40 ppm; oat, straw at 15 ppm; oat, Abyssinian, forage at 40 ppm; oat, Abyssinian, hay at 40 ppm; oat, Abyssinian, straw at 15 ppm; oat, common, forage at 40 ppm; oat, common, hay at 40 ppm; oat, common, straw at 15 ppm; oat, naked, forage at 40 ppm; oat, naked, hay at 40 ppm; oat, naked, straw at 15 ppm; oat, sand, forage at 40 ppm; oat, sand, hay at 40 ppm; oat, sand, straw at 15 ppm; prince's-feather, forage at 50 ppm; prince's-feather, hay at 80 ppm; prince's-feather, straw at 40 ppm; psyllium, forage at 50 ppm; psyllium, hay at 80 ppm; psyllium, straw at 40 ppm; psyllium, blond, forage at 50 ppm; psyllium, blond, hay at 80 ppm; psyllium, blond, straw at 40 ppm; quinoa, forage at 50 ppm; quinoa, hay at 80 ppm; quinoa, straw at 40 ppm; rye, forage at 50 ppm; rye, hay at 80 ppm; rye, straw at 40 ppm; sorghum, grain, and millet, subgroup 15-22E at 0.01 ppm; sorghum, grain, forage at 0.02 ppm; sorghum, grain, stover at 0.09 ppm; soybean, forage at 0.05 ppm; soybean, hay at 0.03 ppm; soybean, seed at 0.01 ppm; teff, forage at 0.02 ppm; teff, hay at 0.02 ppm; teff, straw at 0.09 ppm; teosinte, forage at 0.01 ppm; teosinte, stover at 0.01 ppm; triticale, forage at 50 ppm; triticale, hay at 80 ppm; triticale, straw at 40 ppm; wheat, forage at 50 ppm; wheat, germ at 0.2 ppm; wheat, hay at 80 ppm; wheat, straw at 40 ppm; wheat, subgroup 15-22A at 0.1 ppm; wheat, club, forage at 50 ppm; wheat, club, hay at 80 ppm; wheat, club, straw at 40 ppm; wheat, common, forage at 50 ppm; wheat,

common, hay at 80 ppm; wheat, common, straw at 40 ppm; wheat, durum, forage at 50 ppm; wheat, durum, hay at 80 ppm; wheat, durum, straw at 40 ppm; wheat, einkorn, forage at 50 ppm; wheat, einkorn, hay at 80 ppm; wheat, einkorn, straw at 40 ppm; wheat, emmer, forage at 50 ppm; wheat, emmer, hay at 80 ppm; wheat, emmer, straw at 40 ppm; wheat, macha, forage at 50 ppm; wheat, macha, hay at 80 ppm; wheat, macha, straw at 40 ppm; wheat, oriental, forage at 50 ppm; wheat, oriental, hay at 80 ppm; wheat, oriental, straw at 40 ppm; wheat, Persian, forage at 50 ppm; wheat, Persian, hay at 80 ppm; wheat, Persian, straw at 40 ppm; wheat, Polish, forage at 50 ppm; wheat, Polish, hay at 80 ppm; wheat, Polish, straw at 40 ppm; wheat, poulard, forage at 50 ppm; wheat, poulard, hay at 80 ppm; wheat, poulard, straw at 40 ppm; wheat, shot, forage at 50 ppm; wheat, shot, hay at 80 ppm; wheat, shot, straw at 40 ppm; wheat, spelt, forage at 50 ppm; wheat, spelt, hay at 80 ppm; wheat, spelt, straw at 40 ppm; wheat, timopheevi, forage at 50 ppm; wheat, timopheevi, hay at 80 ppm; wheat, timopheevi, straw at 40 ppm; wheat, vavilovi, forage at 50 ppm; wheat, vavilovi, hay at 80 ppm; wheat, vavilovi, straw at 40 ppm; wheat, wild einkorn, forage at 50 ppm; wheat, wild einkorn, hay at 80 ppm; wheat, wild einkorn, straw at 40 ppm; wheat, wild emmer, forage at 50 ppm; wheat, wild emmer, hay at 80 ppm; wheat, wild emmer, straw at 40 ppm; wheatgrass, intermediate, forage at 50 ppm; wheatgrass, intermediate, hay at 80 ppm; wheatgrass, intermediate, straw at 40 ppm; cattle, fat at 0.15 ppm; cattle, kidney at 1.0 ppm; cattle, liver at 0.05 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 1.0 ppm; egg at 0.01 ppm; goat, fat at 0.15 ppm; goat, kidney at 1.0 ppm; goat, liver at 0.05 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 1.0 ppm; hog, fat at 0.15 ppm; hog, kidney at 1.0 ppm; hog, liver at 0.05 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 1.0 ppm; horse, fat at 0.15 ppm; horse, kidney at 1.0 ppm; horse, liver at 0.05 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 1.0 ppm; milk at 0.01 ppm; poultry, fat at 0.01 ppm; poultry, liver at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, meat byproducts at 0.01 ppm; sheep, fat at 0.15 ppm; sheep, kidney at 1.0 ppm; sheep, liver at 0.05 ppm; sheep, meat at 0.01 ppm; and sheep, meat byproducts at 1.0 ppm. A high-performance liquid chromatography employing tandem mass spectrometric detection (HPLC-MS/MS) is used to measure and

evaluate the chemical dichlorprop-P. *Contact:* RD.

2. *PP3E9077*. EPA-HQ-OPP-2023-0554. The IR-4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to establish tolerances in 40 CFR 180.462 for residues of the herbicide pyridate, O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate, and its metabolites, 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-4-ol, calculated as the stoichiometric equivalent of pyridate, in or on the raw agricultural commodities: Mint, dried leaves at 15 ppm; mint, fresh leaves at 3 ppm; field corn subgroup 15-22C at 0.03 ppm; kohlrabi at 0.03 ppm; and vegetable, brassica, head and stem, group 5-16 at 0.03 ppm. A HPLC-MS/MS residue analytical method was used for the determination of pyridate and CL 9673 in crops. *Contact:* RD.

3. *PP3E9080*. EPA-HQ-OPP-2024-0140. The IR-4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), requests to amend 40 CFR 180.712 by establishing a new tolerance for residues of the fungicide inpyrfluxam, including its metabolites and degradates, (3-(difluoromethyl)-N-[(R)-2,3-dihydro-1,1,3-trimethyl-1H-inden-4-yl]-1-methyl-1H-pyrazole-4-carboxamide) in or on the raw agricultural plant commodity: Vegetable, cucurbit, group 9, at 0.15 ppm. An independently validated analytical method has been submitted for determining inpyrfluxam residues with appropriate sensitivity in all crop commodities for which tolerances are being requested. *Contact:* RD.

4. *PP 3F9067*. EPA-HQ-OPP-2023-0596. Bayer CropScience LP, 800 N. Lindbergh Blvd., St. Louis, MO 63167, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide ethiprole, 5-amino-1-[2,6-dichloro-4-(trifluoromethyl) phenyl]-4-(ethylsulfanyl)-1H-pyrazole-3-carbonitrile in or on sugarcane at 0.1 ppm. A HPLC-MS/MS method is used to measure and evaluate the chemical ethiprole. *Contact:* RD.

5. *PP 3F9068*. EPA-HQ-OPP-2023-0537. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, topramezone, in or on cottonseed, subgroup 20C at 0.03 ppm and cotton, gin byproducts at 0.9 ppm. A HPLC-MS/MS is used to measure and

evaluate the chemical topramezone. *Contact:* RD.

6. *PP 3F9085*. EPA-HQ-OPP-2024-0217. The American Spice Trade Association, 1101 17th Street NW, Suite 700, Washington DC 20036, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide, acetamiprid, in or on pepper, black at 0.1 ppm; and spices from Codex crop group spices, seed that overlap with spices in Crop Group 19: Ambrette, seed; angelica, seed; angelica, daharian, seed; anise, seed; annatto, seed; candlebush; caraway, black, seed; caraway, seed; celery, seed; chervil, seed; chinese nutmeg tree; coriander, seed; cubeb, seed; culantro, seed; cumin, seed; dill, seed; fennel, seed; fennel flower, seed; fenugreek, seed; grains of paradise, seed; guarana; honewort, seed; lovage, seed; mahaleb; malabar tamarind; milk thistle; mustard, black, seed; mustard, brown, seed; mustard, white, seed; nutmeg; poppy seed; sesame seed; wattle seed at 2.0 ppm. The GC/ECD, HPLC/UV, GC-MS/MS, and HPLC-MS/MS methods are used to measure and evaluate the chemical acetamiprid. *Contact:* RD.

D. Notice of Filing—New Tolerances for Non-Inerts

1. *PP 2F8995*. EPA-HQ-OPP-2022-0594. Nufarm Limited, C/O Nufarm Americas, Inc. 4020 Aerial Center Parkway, Suite 101 Morrisville, NC 27560, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide dichlorprop-P, (R)-2-(2,4-dichlorophenoxy)propionic acidin or onamaranth, grain, forage at 50 ppm; amaranth, grain, hay at 80 ppm; amaranth, grain, straw at 40 ppm; amaranth, purple, forage at 50 ppm; amaranth, purple, hay at 80 ppm; amaranth, purple, straw at 40 ppm; baby corn, forage at 0.06 ppm; baby corn, stover at 0.15 ppm; barley, hay at 40 ppm; barley, straw at 15 ppm; barley, subgroup 15-22B at 0.3 ppm; buckwheat, hay at 40 ppm; buckwheat, straw at 15 ppm; buckwheat, tartary, hay at 40 ppm; buckwheat, tartary, straw at 15 ppm; canarygrass, annual, hay at 40 ppm; canarygrass, annual, straw at 15 ppm; cañihua, forage at 50 ppm; cañihua, hay at 80 ppm; cañihua, straw at 40 ppm; chia, forage at 50 ppm; chia, hay at 80 ppm; chia, straw at 40 ppm; corn, field, forage at 0.01 ppm; corn, field, stover at 0.01 ppm; corn, field, subgroup 15-22C at 0.01 ppm; corn, pop, stover at 0.01 ppm; corn, sweet, forage at 0.06 ppm; corn, sweet, stover at 0.15 ppm; corn, sweet, subgroup 15-22D at 0.01 ppm; cram-cram, forage at 50 ppm; cram-cram, hay at 80 ppm; cram-cram, straw at 40 ppm;

fonio, black, forage at 0.02 ppm; fonio, black, stover at 0.09 ppm; fonio, white, forage at 0.02 ppm; fonio, white, stover at 0.09 ppm; huauzontle, grain, forage at 50 ppm; huauzontle, grain, hay at 80 ppm; huauzontle, grain, straw at 40 ppm; inca wheat, forage at 50 ppm; inca wheat, hay at 80 ppm; inca wheat, straw at 40 ppm; job's tears, forage at 0.02 ppm; job's tears, stover at 0.09 ppm; millet, barnyard, forage at 0.02 ppm; millet, barnyard, hay at 0.02 ppm; millet, barnyard, straw at 0.09 ppm; millet, finger, forage at 0.02 ppm; millet, finger, hay at 0.02 ppm; millet, finger, straw at 0.09 ppm; millet, foxtail, forage at 0.02 ppm; millet, foxtail, hay at 0.02 ppm; millet, foxtail, straw at 0.09 ppm; millet, little, forage at 0.02 ppm; millet, little, hay at 0.02 ppm; millet, little, straw at 0.09 ppm; millet, pearl, forage at 0.02 ppm; millet, pearl, hay at 0.02 ppm; millet, pearl, straw at 0.09 ppm; millet, proso, forage at 0.02 ppm; millet, proso, hay at 0.02 ppm; millet, proso, straw at 0.09 ppm; oat, forage at 40 ppm; oat, hay at 40 ppm; oat, straw at 15 ppm; oat, abyssinian, forage at 40 ppm; oat, abyssinian, hay at 40 ppm; oat, abyssinian, straw at 15 ppm; oat, common, forage at 40 ppm; oat, common, hay at 40 ppm; oat, common, straw at 15 ppm; oat, naked, forage at 40 ppm; oat, naked, hay at 40 ppm; oat, naked, straw at 15 ppm; oat, sand, forage at 40 ppm; oat, sand, hay at 40 ppm; oat, sand, straw at 15 ppm; prince's-feather, forage at 50 ppm; prince's-feather, hay at 80 ppm; prince's-feather, straw at 40 ppm; psyllium, forage at 50 ppm; psyllium, hay at 80 ppm; psyllium, straw at 40 ppm; psyllium, blond, forage at 50 ppm; psyllium, blond, hay at 80 ppm; psyllium, blond, straw at 40 ppm; quinoa, forage at 50 ppm; quinoa, hay at 80 ppm; quinoa, straw at 40 ppm; rye, forage at 50 ppm; rye, hay at 80 ppm; rye, straw at 40 ppm; sorghum, grain, and millet, subgroup 15–22E at 0.01 ppm; sorghum, grain, forage at 0.02 ppm; sorghum, grain, stover at 0.09 ppm; soybean, forage at 0.05 ppm; soybean, hay at 0.03 ppm; soybean, seed at 0.01 ppm; teff, forage at 0.02 ppm; teff, hay at 0.02 ppm; teff, straw at 0.09 ppm; teosinte, forage at 0.01 ppm; teosinte, stover at 0.01 ppm; triticale, forage at 50 ppm; triticale, hay at 80 ppm; triticale, straw at 40 ppm; wheat, forage at 50 ppm; wheat, germ at 0.2 ppm; wheat, hay at 80 ppm; wheat, straw at 40 ppm; wheat, subgroup 15–22A at 0.1 ppm; wheat, club, forage at 50 ppm; wheat, club, hay at 80 ppm; wheat, club, straw at 40 ppm; wheat, common, forage at 50 ppm; wheat, common, hay at 80 ppm; wheat,

common, straw at 40 ppm; wheat, durum, forage at 50 ppm; wheat, durum, hay at 80 ppm; wheat, durum, straw at 40 ppm; wheat, einkorn, forage at 50 ppm; wheat, einkorn, hay at 80 ppm; wheat, einkorn, straw at 40 ppm; wheat, emmer, forage at 50 ppm; wheat, emmer, hay at 80 ppm; wheat, emmer, straw at 40 ppm; wheat, macha, forage at 50 ppm; wheat, macha, hay at 80 ppm; wheat, macha, straw at 40 ppm; wheat, oriental, forage at 50 ppm; wheat, oriental, hay at 80 ppm; wheat, oriental, straw at 40 ppm; wheat, Persian, forage at 50 ppm; wheat, Persian, hay at 80 ppm; wheat, Persian, straw at 40 ppm; wheat, Polish, forage at 50 ppm; wheat, Polish, hay at 80 ppm; wheat, Polish, straw at 40 ppm; wheat, poulard, forage at 50 ppm; wheat, poulard, hay at 80 ppm; wheat, poulard, straw at 40 ppm; wheat, shot, forage at 50 ppm; wheat, shot, hay at 80 ppm; wheat, shot, straw at 40 ppm; wheat, spelt, forage at 50 ppm; wheat, spelt, hay at 80 ppm; wheat, spelt, straw at 40 ppm; wheat, timopheevi, forage at 50 ppm; wheat, timopheevi, hay at 80 ppm; wheat, timopheevi, straw at 40 ppm; wheat, vavilovi, forage at 50 ppm; wheat, vavilovi, hay at 80 ppm; wheat, vavilovi, straw at 40 ppm; wheat, wild einkorn, forage at 50 ppm; wheat, wild einkorn, hay at 80 ppm; wheat, wild einkorn, straw at 40 ppm; wheat, wild emmer, forage at 50 ppm; wheat, wild emmer, hay at 80 ppm; wheat, wild emmer, straw at 40 ppm; wheatgrass, intermediate, forage at 50 ppm; wheatgrass, intermediate, hay at 80 ppm; wheatgrass, intermediate, straw at 40 ppm; cattle, fat at 0.15 ppm; cattle, kidney at 1.0 ppm; cattle, liver at 0.05 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 1.0 ppm; egg at 0.01 ppm; goat, fat at 0.15 ppm; goat, kidney at 1.0 ppm; goat, liver at 0.05 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 1.0 ppm; hog, fat at 0.15 ppm; hog, kidney at 1.0 ppm; hog, liver at 0.05 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 1.0 ppm; horse, fat at 0.15 ppm; horse, kidney at 1.0 ppm; horse, liver at 0.05 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 1.0 ppm; milk at 0.01 ppm; poultry, fat at 0.01 ppm; poultry, liver at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, meat byproducts at 0.01 ppm; sheep, fat at 0.15 ppm; sheep, kidney at 1.0 ppm; sheep, liver at 0.05 ppm; sheep, meat at 0.01 ppm; and sheep, meat byproducts at 1.0 ppm. AHPLC–MS/MS is used to measure and evaluate the chemical dichloroprop-P. *Contact:* RD.

2. *PP 3E9060.* EPA–HQ–OPP–2024–0176. USDA Foreign Agriculture Service, 1400 Independence Ave.,

Washington, DC 20250, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, fluopyram (*N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl] ethyl]-2-(trifluoromethyl) benzamide), in or on mango at 1 ppm. A HPLC–MS/MS is used to measure and evaluate the chemical fluopyram. *Contact:* RD.

3. *PP 3E9077.* EPA–HQ–OPP–2023–0554. The IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to establish tolerances in 40 CFR 180.462 for residues of the herbicide pyridate, *O*-(6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl-carbonothioate, and its metabolites, 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-4-ol, calculated as the stoichiometric equivalent of pyridate, in or on the raw agricultural commodities: Mint, dried leaves at 15 ppm; mint, fresh leaves at 3 ppm; field corn subgroup 15–22C at 0.03 ppm; kohlrabi at 0.03 ppm; and vegetable, brassica, head and stem, group 5–16 at 0.03 ppm. A HPLC–MS/MS residue analytical method was used for the determination of pyridate and CL 9673 in crops. *Contact:* RD.

4. *PP 3E9080.* EPA–HQ–OPP–2024–0140. The IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), requests to amend 40 CFR 180.712 by establishing a new tolerance for residues of the fungicide inpyrfluxam, including its metabolites and degradates, (3-(difluoromethyl)-*N*-[(*R*)-2,3-dihydro-1,1,3-trimethyl-1*H*-inden-4-yl]-1-methyl-1*H*-pyrazole-4-carboxamide) in or on the raw agricultural plant commodity: Vegetable, cucurbit, group 9, at 0.15 ppm. An independently validated analytical method has been submitted for determining inpyrfluxam residues with appropriate sensitivity in all crop commodities for which tolerances are being requested. *Contact:* RD.

5. *PP 3F9067.* EPA–HQ–OPP–2023–0596. Bayer CropScience LP, 800 N. Lindbergh Blvd., St. Louis, MO 63167, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide ethiprole, 5-amino-1-[2,6-dichloro-4-(trifluoromethyl) phenyl]-4-(ethylsulfinyl)-1*H*-pyrazole-3-carbonitrile in or on sugarcane at 0.1 ppm. A HPLC–MS/MS method is used to measure and evaluate the chemical ethiprole. *Contact:* RD.

6. *PP 3F9068.* EPA–HQ–OPP–2023–0537. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research

Triangle Park, North Carolina 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, topramezone, in or on cottonseed, subgroup 20C at 0.03 ppm and cotton, gin byproducts at 0.9 ppm. A HPLC–MS/MS is used to measure and evaluate the chemical topramezone. *Contact:* RD.

7. *PP 3F9075.* EPA–HQ–OPP–2024–0187. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, boscalid (3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro[1,1'-biphenyl]-2-yl)), in or on cereal grain, field corn subgroup 15–22C at 0.2 ppm; cereal grain, sweet corn subgroup 15–22D at 0.2 ppm; corn, field forage at 20.0 ppm; corn, sweet forage at 20.0 ppm; corn, pop, forage at 20.0 ppm; corn, field stover at 50.0 ppm; corn, sweet, stover at 50.0 ppm; corn, pop, stover at 50.0 ppm.

In addition, the petition includes the request to modify the expression of the existing tolerances for indirect or inadvertent residues of boscalid (3-pyridinecarboxamide, 2-chloro-*N*-(4'-chloro[1,1'-biphenyl]-2-yl)) in or on grain, cereal, group 15 at 0.2 ppm to grain, cereal, group 15, except corn at 0.2 ppm; grain, cereal, forage, fodder and straw, group 16, forage at 2.0 ppm to grain, cereal, forage, fodder and straw, group 16, forage, except corn forage at 2.0 ppm; and grain, cereal, forage, fodder and straw, group 16, stover at 1.5 ppm to grain, cereal, forage, fodder and straw, group 16, stover, except corn stover at 1.5 ppm. Liquid chromatography tandem mass spectrometry is used to measure and evaluate the chemical boscalid. *Contact:* RD.

8. *PP 3F9085.* EPA–HQ–OPP–2024–0217. The American Spice Trade Association, 1101 17th Street NW, Suite 700, Washington, DC 20036, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide, acetamiprid, in or on pepper, black at 0.1 ppm; and spices from Codex crop group spices, seed that overlap with spices in Crop Group 19: Ambrette, seed; angelica, seed; angelica, daharian, seed; anise, seed; annatto, seed; candlebush; caraway, black, seed; caraway, seed; celery, seed; chervil, seed; chinese nutmeg tree; coriander, seed; cubeb, seed; culantro, seed; cumin, seed; dill, seed; fennel, seed; fennel flower, seed; fenugreek, seed; grains of paradise, seed; guarana; honewort, seed; lovage, seed; mahaleb; malabar tamarind; milk thistle; mustard, black, seed; mustard, brown, seed; mustard, white, seed; nutmeg; poppy seed; sesame seed; wattle seed at 2.0

ppm. The GC/ECD, HPLC/UV, GC–MS/MS and HPLC–MS/MS methods are used to measure and evaluate the chemical acetamiprid. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: June 24, 2024.

Kimberly Smith,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2024–14408 Filed 6–28–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 24–121, DA 24–396; FR ID 227746]

Expanded Federal Use of the Non-Federal FSS and MSS Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Office of Engineering and Technology opens a new docket and seeks comment on ways to potentially expand Federal access to non-Federal, including commercial, satellite services.

DATES: Interested parties may file comments on or before July 31, 2024; and reply comments on or before August 30, 2024. All filings must refer to ET Docket No. 24–121.

ADDRESSES: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates provided in the **DATES** section of this Proposed Rule. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). You may submit comments, identified by ET Docket No. 24–121 and referencing this public notice, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by First-Class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted

between 8:00 a.m. and 4:00 p.m. at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- **Commercial overnight deliveries** (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- **U.S. Postal Service First-Class, Express, and Priority mail** must be addressed to Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

- **People with Disabilities:** Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

- **Availability of Documents:** Comments and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

FOR FURTHER INFORMATION CONTACT:

Nicholas Oros of the Office of Engineering and Technology, at Nicholas.Oros@fcc.gov or 202–418–0636.

SUPPLEMENTARY INFORMATION: This is a summary of the Office of Engineering and Technology's Public Notice in ET Docket No. 24–121, DA 24–396, released April 26, 2024. The full text of this document is available for public inspection at the following internet address: <https://www.fcc.gov/document/oet-seeks-comment-expanded-federal-use-non-federal-bands>.

Initial Regulatory Flexibility Act Analysis. The 2013 NPRM (FCC 13–65, 78 FR 39200) and 2021 FNPRM (FCC 21–44, 86 FR 30860) included Initial Regulatory Flexibility Analyses (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposals. The Office of Engineering and Technology invite parties to file comments on the IRFAs in light of this request for supplemental comments.

Paperwork Reduction Act Analysis. This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. Thus, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Ex Parte Presentations. The Commission has treated this proceeding as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this Public Notice is available at <https://www.fcc.gov/proposedrulemakings>.

Synopsis

The Office of Engineering and Technology invites interested parties to

supplement the record with additional comments in this new docket, ET Docket No. 24–121, on possible mechanisms to expand Federal use of the bands used by commercial satellite networks that are not currently allocated for the Federal fixed satellite service (FSS) and mobile satellite service (MSS). Consistent with the Commission’s direction to OET in the *2023 Second Report and Order* (FCC 23–76, adopted Sept. 21, 2023), the record compiled in response to this Public Notice will be considered in conjunction with the existing record on this issue compiled in ET Docket No. 13–115 and RM–11341, which the Office of Engineering and Technology incorporates herein by reference. In particular, the Office of Engineering and Technology invites commenters to supplement the record on possible approaches to providing Federal earth stations with interference protection when those earth stations are communicating with commercial satellites in bands that are not allocated for Federal FSS and MSS. As noted above, the *2013 NPRM* (FCC 13–65, 78 FR 39200) proposed to add a co-primary Federal FSS or MSS allocation to several bands together with an allocation table footnote that limits primary Federal use of the bands to earth stations communicating with non-Federal space stations. The *2013 NPRM* alternatively proposed to add a footnote to the Allocation Table outlining circumstances under which Federal earth stations operating with non-Federal space stations would be entitled to interference protection. The Office of Engineering and Technology seeks renewed comment on these proposals. The Office of Engineering and Technology also seeks comment on whether there should be any additional modifications to the Allocation Table in connection with either proposal.

The Satellite Industry Association (SIA) suggested an alternative to the *2013 NPRM*’s two proposals for providing Federal earth stations with interference protected access to spectrum bands that lack a Federal FSS and MSS allocation. SIA proposed that FSS and MSS allocations be added to the Federal portion of the Allocation Table for these bands along with an indication that the Federal allocation is limited to earth stations only. In addition, SIA proposed adding a footnote to the Allocation Table for these bands indicating that the Commission has exclusive regulatory

jurisdiction over the co-primary allocations and that NTIA is responsible for assignments for Federal earth stations authorized to operate in the bands pursuant to the Commission’s Part 25 rules. The Office of Engineering and Technology invites commenters to address SIA’s proposal as well as any alternative approaches that could be used to provide Federal earth stations with interference-protected access to commercial satellite services. Finally, the Office of Engineering and Technology seeks comment on whether implementing any of these proposals might inhibit future repurposing of these bands or expansion of non-Federal operations and, if so, any approaches that might avoid such inhibition.

As the *2021 FNPRM* (FCC 21–44, 86 FR 30860) recognized, the spectral landscape in non-Federal FSS and MSS allocations has significantly changed since the *2013 NPRM*. As a result, the Office of Engineering and Technology seeks to refresh the record on which FSS and MSS frequency bands that are not allocated for Federal FSS and MSS might meet the needs of Federal agencies for communications with non-Federal satellites. As the Commission first noted in 2013, providing Federal earth stations with interference protection may require that new non-Federal stations, whether satellite earth stations or terrestrial stations, be coordinated with existing Federal earth stations in the FSS and MSS frequency bands to which any new rules would apply. This coordination may require additional effort by non-Federal station applicants and could restrict the locations and operating parameters of new non-Federal stations. Does any future impact on non-Federal operations outweigh the benefits of expanding Federal users’ access to these bands? The *2013 NPRM* proposed to implement agreed-upon procedures that would be followed by the Commission and NTIA to ensure parity between Federal and non-Federal earth stations that are similar to the procedures currently used by the Commission to coordinate new non-Federal earth stations. Would the procedures discussed in the *2013 NPRM* be appropriate for coordination between Federal earth stations and non-Federal stations?

Federal Communications Commission.

Ronald T. Repasi,

Chief, Office of Engineering and Technology.

[FR Doc. 2024–14196 Filed 6–28–24; 8:45 am]

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Notices

Federal Register

Vol. 89, No. 126

Monday, July 1, 2024

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

U.S. Codex Office

[Docket No. USDA–2024–0004]

International Standard-Setting Activities

AGENCY: Trade and Foreign Agricultural Affairs (TFAA), USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary (SPS) standard-setting activities of the Codex Alimentarius (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act. This notice also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which covers Codex activities during the time periods of June 1, 2023, to May 31, 2024, and June 1, 2024, to May 31, 2025, seeks comments on standards under consideration and recommendations for new standards.

ADDRESSES: The U.S. Codex Office (USCO) invites interested persons to submit their comments on this notice. Comments may be submitted by one of the following methods:

- **Federal e-Rulemaking Portal:** This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at the website for submitting comments.

- **Mail:** Send to Docket Clerk, U.S. Department of Agriculture, Trade and Foreign Agricultural Affairs, U.S. Codex Office, 1400 Independence Avenue SW, Mailstop S4861, Washington, DC 20250–3700.

- **Hand- or Courier-Delivered Submittals:** Deliver to 1400

Independence Avenue SW, Room 4861, Washington, DC 20250–3700.

Instructions: All items submitted by mail or email are to include the Agency name (*i.e.*, USCO) and docket number USDA–2024–0004. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information to <http://www.regulations.gov>. Please state that your comments refer to Codex. If your comments relate to specific Codex committees, please identify the committee(s) in your comments and submit a copy of your comments to the U.S. delegate to the committee.

Docket: For access to background documents or comments received, email uscodex@usda.gov to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Frances Lowe, United States Manager for Codex Alimentarius, U.S. Department of Agriculture, Office of the Under Secretary for Trade and Foreign Agricultural Affairs, U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, Washington, DC 20250–3700, Email: uscodex@usda.gov.

For information pertaining to committees, contact the U.S. delegate for that committee. A complete list of delegates and alternate delegates is accessible via the internet at: <https://www.usda.gov/sites/default/files/documents/us-codex-program-officials.pdf>. Documents pertaining to Codex and specific committee agendas are accessible via the internet at <http://www.fao.org/fao-who-codexalimentarius/meetings/en/>. The U.S. Codex Office also maintains a website at <http://www.usda.gov/codex>, a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). United

States membership in the WTO was approved and the Uruguay Round Agreements Act (Uruguay Round Agreements) was signed into law by the President on December 8, 1994, Public Law 103–465, 108 Stat. 4809. The Uruguay Round Agreements became effective with respect to the United States on January 1, 1995. The Uruguay Round Agreements amended the Trade Agreements Act of 1979. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be “responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization” (19 U.S.C. 2578). The main international standard-setting organizations are the Codex Alimentarius (Codex), the World Organisation for Animal Health (WOAH, founded as OIE), and the International Plant Protection Convention (IPPC). The President, pursuant to Proclamation No. 6780 of March 23, 1995, (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of the SPS standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Trade and Foreign Agricultural Affairs Mission Area the responsibility to inform the public of the SPS standard-setting activities of Codex. The Trade and Foreign Agricultural Affairs Mission Area has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to the U.S. Codex Office (USCO).

Codex was created in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for establishing standards for food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers, ensure fair practices in the food trade, and promote coordination of food standards work undertaken by international governmental and nongovernmental organizations. In the United States, U.S. Codex activities are

managed and carried out by the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS); the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); and the Environmental Protection Agency (EPA).

As the agency responsible for informing the public of the SPS standard-setting activities of Codex, the USCO publishes this notice in the **Federal Register** annually. *Attachment 1: Sanitary and Phytosanitary Activities of Codex* sets forth the following information:

1. The SPS standards under consideration or planned for consideration; and
2. For each SPS standard specified:
 - a. A description of the consideration or planned consideration of the standard
 - b. Whether the United States is participating or plans to participate in the consideration of the standard
 - c. The agenda for United States participation, if any; and
 - d. The agency responsible for representing the United States with respect to the standard.

To obtain copies of the standards listed in *Attachment 1: Sanitary and Phytosanitary Activities of Codex*, please contact the U.S. delegate or the U.S. Codex Office.

This notice also solicits public comment on standards that are currently under consideration or planned for consideration and recommendations for new standards. The U.S. delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The U.S. delegate will facilitate public participation in the United States Government's activities relating to Codex. The U.S. delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding U.S. delegation activities to interested parties. This information will include the status of each agenda item; the U.S. Government's position or preliminary position on each agenda item; and the time and place of planning meetings and debriefing meetings following the Codex committee sessions. In addition, the USCO makes much of the same information available through its web page at <http://www.usda.gov/codex>. If

you would like to access or receive information about specific committees, please visit the web page or notify the appropriate U.S. delegate or the U.S. Codex Office, Room 4861, 1400 Independence Avenue SW, Washington, DC 20250–3700, Email: uscodex@usda.gov.

The information provided in *Attachment 1: Sanitary and Phytosanitary Activities of Codex* describes the status of Codex standard-setting activities by the Codex committees for the time periods from June 1, 2023, to May 31, 2024, and June 1, 2024, to May 31, 2025. A list of forthcoming Codex sessions may be found at: <https://www.fao.org/fao-who-codexalimentarius/meetings/en/>.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the USCO will announce this **Federal Register** publication on-line through the U.S. Codex web page located at <https://www.usda.gov/codex>.

Done at Washington, DC.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

Attachment 1: Sanitary and Phytosanitary Activities of Codex

Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission (Commission or CAC) convened its 46th Session (CAC46) from November 27 to December 2, 2023, in Rome, Italy, with report adoption taking place on December 2, 2023. The relevant document is REP23/CAC. The actions taken by the Commission at CAC46 (e.g., adoption, revocation, approval of new work, discontinuation of work, amendments, etc.) are described below under the respective Codex Committees.

The Commission is scheduled to convene its 47th Session (CAC47) from November 25–30, 2024, in Geneva, Switzerland. At its 47th Session, the Commission will consider adopting standards recommended by committees at Step 8 or 9/10 (final adoption) and advance the work of committees by adopting draft standards at Step 5 (for further comment and consideration by the relevant committee). The Commission will also consider revocation of Codex texts; proposals for new work; discontinuation of work; amendments to Codex standards and related texts; and matters arising from the Reports of the Commission, the Executive Committee, and subsidiary bodies. Although the agenda for the 47th Session is not yet available, it is expected that the Commission will also consider Codex budgetary and financial matters; FAO/WHO scientific support to Codex (activities, budgetary and financial matters); matters arising from FAO/WHO; reports of side events; any other business; and adoption of the report.

The Executive Committee (CCEXEC) is composed of the Commission chairperson; vice-chairpersons; seven members elected by the Commission from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America and South West Pacific; and regional coordinators from the six regional coordinating committees. The United States currently participates as an advisor to Canada, the member elected on a geographical basis for North America.

CCEXEC convened its 84th Session (CCEXEC84) from July 10–14, 2023, in Geneva, Switzerland. The relevant document is REP23/EXEC1. In addition to critical review of standards development (*i.e.*, discussion of recommendations to CAC46 on the work of Codex Committees), CCEXEC84 discussed the Blueprint on the Future of Codex; a revised monitoring framework for the Codex Strategic Plan 2020–2025; timetable and process for development of the Codex Strategic Plan 2026–2031; review of international non-governmental organizations with observer status in Codex; application of the criteria for regional Codex standards; plans outlined by the CAC chair and vice-chairs for additional consultations related to the consideration of maximum residue limits for the veterinary drug zilpaterol hydrochloride (adopted at Step 5, interim adoption, by CAC45 in 2022); and other business, including a brief exchange of views regarding the importance of the joint WHO/FAO scientific advice program and independent expert risk assessments in supporting Codex standards and the need to avoid potential duplication and inconsistent communications due to the undertaking of hazard identification reviews by another WHO-affiliated body.

CCEXEC convened its 85th Session (CCEXEC85) from November 20–24, 2023, in Rome, Italy. The relevant document is REP23/EXEC2. In addition to critical review (*i.e.*, discussion of recommendations to CAC46 on the work of additional Codex Committees that had met since CCEXEC84), CCEXEC85 discussed the Blueprint on the Future of Codex; intersessional work on the draft of initial sections of the Codex Strategic Plan 2026–2031; Codex budgetary and financial matters; matters arising from FAO and WHO; review of international non-governmental organizations with observer status in Codex; application of the criteria for regional Codex standards; and other business including a report from the CAC chair and vice-chairs on consultations related to the consideration of maximum residue limits for zilpaterol hydrochloride, and a proposal from the United States to consider the development of Codex guidance on food safety considerations related to the use of recycled material in food packaging. CCEXEC85 also had further discussion on the need to avoid duplication of scientific reviews by WHO-affiliated bodies and noted the commitment of WHO to address the matter and enhance coordination in the future.

CCEXEC will convene its 86th Session (CCEXEC86) from July 1–5, 2024, in Rome, Italy. CCEXEC86 is expected to discuss critical review (*i.e.*, recommendations to

CAC47 on the work of Codex Committees); key elements of the Model for Future Codex Work; the Codex Strategic Plan for 2026–2031; Codex budgetary and financial matters; applications from international non-governmental organizations for observer status in Codex; and other business.

Responsible Agency: USDA/TFAA/USCO.
U.S. Participation: Yes.

Codex Committee on Contaminants in Foods

The Codex Committee on Contaminants in Foods (CCCCF) establishes or endorses permitted maximum levels (MLs) or guideline levels (GLs) for contaminants and naturally occurring toxicants in food and feed; prepares priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); considers and elaborates methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed; considers and elaborates standards or codes of practice for related subjects; and considers other matters assigned to it by the Commission in relation to contaminants and naturally occurring toxicants in food and feed.

The Committee had the following items which were considered by the 46th Session of the Codex Alimentarius Commission (CAC46) in November 2023:

Final adoption at Step 8 or Step 5/8:

- Code of Practice for Prevention and Reduction of Mycotoxin Contamination in Cassava and cassava-based products
- ML for lead in ready-to eat meals for infants and young children
- ML for lead in soft brown, raw and non-centrifugal sugars
- ML for total aflatoxins in dried chilli and nutmeg, and ML for ochratoxin A in dried chilli, paprika, and nutmeg

Approval as new work:

- Code of Practice/Guidelines for the prevention or reduction of ciguatera poisoning

CCCCF convened its 17th Session (CCCCF17) from April 15–19, 2024, in Panama City, Panama, with report adoption taking place on April 19, 2024. The relevant document is REP24/CF17. CCCC17 advanced the following items for consideration by the 47th Session of the Codex Alimentarius Commission (CAC47) in November 2024:

For final adoption at Step 8 and Step 5/8:

- MLs for lead in spices, dried aril; dried seeds (including a separate ML for celery seeds); dried rhizomes and roots, dried floral parts; and spices, dried fruit, and berries (including separate MLs for Sichuan pepper, star anise, paprika, and sumac)
- Sampling plans for methylmercury in fish
- Code of Practice for the Prevention and Reduction of Ciguatera Poisoning
- MLs for cadmium and lead in quinoa

For approval as new work:

- A revision of the *Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Peanuts* (CXC 55–2004)

- A code of practice for the prevention and reduction of cadmium contamination in foods

The 18th Session of CCCC (CCCC18) is scheduled to convene again from June 23–27, 2025. The Committee is expected to continue working on:

- ML for total aflatoxins in ready-to-eat peanuts and associated sampling plan
- MLs for lead in dried bark and dried culinary herbs
- Sampling plans for total aflatoxins and ochratoxin A in certain spices
- New work on the revision of the *Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Peanuts* (CXC 55–2004)
- New work on a code of practice for the prevention and reduction of cadmium contamination in foods
- Discussion paper on the revision of the *Code of Practice to Prevent and Reduce Pyrrolizidine Alkaloid Contamination in Food and Feed*
- Discussion paper on tropane alkaloids
- Discussion paper on the revision of the *Code of Practice for the Reduction of Acrylamide in Foods*
- Discussion paper on the revision of the *Code of Practice for the Reduction of Aflatoxin B1 in Raw Materials and Supplemental Feedingstuffs for Milk-Producing Animals*
- Numeric Performance Criteria for methods for Total Aflatoxins utilizing the sum of components concept (in relevant sampling plans)
- Guidance on data analysis for ML development and improved data collection
- Review of Codex standards for contaminants
- Priority list of contaminants for evaluation by JECFA and follow-up work to the outcomes of JECFA evaluations and FAO/WHO expert consultations
- Comments in response to a Circular Letter requesting information on the application of MLs to multi-ingredient products, new risk management measures for the reduction of acrylamide in food, and emerging issues relevant to CCCC

Responsible Agencies: HHS/FDA/Center for Food Safety and Applied Nutrition (CFSAN); USDA/Food Safety and Inspection Service (FSIS).

U.S. Participation: Yes.

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils (CCFO) is responsible for elaborating worldwide standards for fats and oils of animal, vegetable, and marine origin, including margarine and olive oil.

CCFO convened its 28th Session (CCFO28) from February 19–23, 2024, in Kuala Lumpur, Malaysia, with report adoption taking place on February 23, 2024. The relevant document is REP24/FO. CCFO28 advanced the following items for consideration by CAC47 in November 2024:

For final adoption at Step 8 and Step 5/8:

- Amendment/Revision of the *Standard for Named Vegetable Oils* (CXS 210–1999): inclusion of avocado oil, camellia seed oil,

sacha inchi oil, and high oleic acid soya bean oil

- Revision of the *Standard for Olive Oils and Pomace Olive Oils* (CXS 33–1981)
- Amendment/Revision of the *Standard for Fish Oils* (CXS 329–2017): inclusion of *Calanus* oil

For approval as new work:

- A standard for microbial omega-3 oils
- Proposed revisions to the Codex standards on fats and oils to reduce Trans-Fatty Acid intake

CCFO is tentatively scheduled to convene its 29th Session (CCFO29) from February 9–13, 2026. The Committee is expected to continue work on:

- Collection and assessment for suitability of global scientific data and information on individual samples of olive oil, in order to make recommendations on the need and process for further analysis of the data and establishment of methods of analysis and sampling
- Consideration of proposals on new substances to be added to the List of Acceptable Previous Cargoes

Responsible Agencies: HHS/FDA/Center for Food Safety and Applied Nutrition (CFSAN); USDA/Agricultural Research Service (ARS).

U.S. Participation: Yes.

Codex Committee on Fish and Fishery Products

The Committee on Fish and Fishery Products (CCFFP) is responsible for elaborating standards for fresh, frozen, and otherwise processed fish, crustaceans, and mollusks.

CCFFP is working by correspondence and will meet virtually from October 7–17, 2024 on the Electronic Working Group (EWG) platform to complete its current work. The Committee is working on:

- The *Standard for Canned Sardines and Sardine-Type Products* (CXS 94–1981), inclusion of the fish species *S. lemuru* (Bali Sardinella) in the list of *Sardinella* species under section 2.1.

Responsible Agencies: HHS/FDA/CFSAN; DOC/NOAA/National Marine Fisheries Service (NMFS).

U.S. Participation: Yes.

Codex Committee on Food Additives

The Codex Committee on Food Additives (CCFA) establishes or endorses acceptable MLs for individual food additives; prepares a priority list of food additives for risk assessment by the JECFA; assigns functional classes to individual food additives; recommends specifications of identity and purity for food additives for adoption by the Codex Alimentarius Commission; considers methods of analysis for the determination of additives in food; and considers and elaborates standards or codes of practice for related subjects such as the labeling of food additives when sold as such.

The Committee had the following items which were considered by CAC46 in November 2023:

Final adoption at Step 8 and Step 5/8:

- Draft and proposed draft food additive provisions of the *General Standard for*

Food Additives (GSFA, CXS 192–1995) and revisions to adopted provisions

- Proposed draft revision of the *Class Names and the International Numbering System for Food Additives* (CXG 36–1989)
- Proposed draft *Specifications for the Identity and Purity of Food Additives* (CXA 6–2021)

Approval as new work:

- Proposals for new food additive provisions of the GSFA
- Priority List of substances proposed for evaluation by JECFA

The 54th Session of CCFA (CCFA54) convened from April 22–26, 2024 in Chengdu, Sichuan Province, China. The relevant document is REP24/FA. CCFA54 advanced the following items for consideration by CAC47 in November 2024:

For final adoption at Step 8 and Step 5/8:

- Draft and proposed draft food additive provisions of the GSFA (CXS 192–1995) and revisions to adopted provisions
- Proposed draft revision of the *Class Names and the International Numbering System for Food Additives* (CXG 36–1989)
- Proposed draft *Specifications for the Identity and Purity of Food Additives* (CXM 6–2021)

Other:

- Revised food additive provisions of the GSFA in relation to the alignment of standards from the Codex Committee on Milk and Milk Products (CCMMP); the Codex Committee on Processed Fruits and Vegetables (CCPFV); the Coordinating Committee for the Near East (CCNE); the Coordinating Committee for Asia (CCASIA); and the Coordinating Committee for Latin America and the Caribbean (CCLAC)
- Discontinuation of draft and proposed food additive provisions and revocation of existing food additive provisions as recommended by CCFA54

For approval as new work:

- Proposed new work on the development of a standard for baker's yeast

CCFA is scheduled to convene its 55th Session (CCFA55) from March 24–28, 2025. The Committee is expected to continue work on:

- New or revised provisions of the GSFA
- The alignment and the endorsement of food-additive provisions referred by Commodity Committees
- Revision of the *Class Names and the International Numbering System for Food Additives* (CXG 36–1989)
- Proposal for additions and changes to the Priority List of Substances proposed for evaluation by JECFA

Responsible Agency: HHS/FDA/CFSAN.
U.S. Participation: Yes.

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene (CCFH) is responsible for developing basic provisions on food hygiene, applicable to all food; considering and amending or endorsing provisions on food hygiene contained in Codex commodity standards and Codex codes of practice developed by other

committees; considering specific food hygiene problems assigned to it by the Commission; suggesting and prioritizing areas where there is a need for microbiological risk assessment at the international level and developing questions to be addressed by the risk assessors; and considering microbiological risk management matters in relation to food hygiene and in relation to the FAO/WHO risk assessments.

The Committee had the following items which were considered by CAC46 in November 2023:

Final adoption at Step 8:

- Guidelines for the Control of Shiga Toxin-Producing *Escherichia coli* (STEC) in Raw Beef, Fresh Leafy Vegetables, Raw Milk and Raw Milk Cheeses, and Sprouts (General Section, Annex I on raw beef, and Annex III on raw milk and raw milk cheeses)
- Guidelines for the Safe Use and Reuse of Water in Food Production and Processing (General Section and Annex I on Fresh Produce)

Approval as new work:

- Guidelines for food hygiene control measures in traditional markets for food
- Revision of the *Guidelines on the Application of the General Principles of Food Hygiene to the Control of Pathogenic Vibrio Species in Seafood* (CXG 73–2010)

The 54th Session of CCFH (CCFH54) convened from March 11–15, 2024, in Nairobi, Kenya. The relevant document is REP 24/FH. CCFH54 advanced the following items for consideration by CAC47 in November 2024:

For final adoption at Step 5/8:

- *Guidelines for the Control of Shiga Toxin-Producing Escherichia coli (STEC) in Raw Beef, Fresh Leafy Vegetables, Raw Milk and Raw Milk Cheeses, and Sprouts* (CXG 99–2023) (Annexes on Fresh Leafy Vegetables and Sprouts)
- *Guidelines for the Safe Use and Reuse of Water in Food Production and Processing* (CXG 100–2023) (Annex on Milk and Milk Products)
- *Guidelines for Food Hygiene Control Measures in Traditional Markets for Food*

For approval as new work:

- Revision of the *Guidelines on the Application of General Principles of Food Hygiene to the Control of Viruses in Food* (CXG 79–2012)
- Revision of the *Guidelines for the Control of Campylobacter and Salmonella in Chicken Meat* (CXG 78–2011)
- Revision of the *Guidelines on the Application of General Principles of Food Hygiene to the Control of Listeria monocytogenes in Foods* (CXG 61–2007)

CCFH is scheduled to convene its 55th Session (CCFH55) from December 8–11, 2025, in the United States. The Committee is expected to continue work on:

- *Guidelines for the Safe Use and Re-Use of Water in Food Production* (CXG 100–2023) (Revision on Annex on Fish and Fishery Products and Drafting of Annex related to water-fit-for-purpose assessment, safety management, and technologies for recovery and treatment of water for reuse)

- Alignment of CCFH documents with the revised *General Principles of Food Hygiene* (CXC 1–1969)
- New work proposals/forward workplan

Responsible Agencies: HHS/FDA/CFSAN; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Import and Export Inspection and Certification Systems

The Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) is responsible for developing principles and guidelines for food import and export inspection and certification systems, with a view to harmonizing methods and procedures that protect the health of consumers, ensure fair trading practices, and facilitate international trade in foodstuffs; developing principles and guidelines for the application of measures by the competent authorities of exporting and importing countries to provide assurance, where necessary, that foodstuffs comply with requirements, especially statutory health requirements; developing guidelines for the utilization, as and when appropriate, of quality assurance systems to ensure that foodstuffs conform with requirements and promote the recognition of these systems in facilitating trade in food products under bilateral/multilateral arrangements by countries; developing guidelines and criteria with respect to format, declarations, and language of such official certificates as countries may require with a view towards international harmonization; making recommendations for information exchange in relation to food import/export control; consulting as necessary with other international groups working on matters related to food inspection and certification systems; and considering other matters assigned to it by the Commission in relation to food inspection and certification systems.

The Committee had the following items which were considered by CAC46 in November 2023:

Final adoption at Step 5/8:

- Guidelines on recognition and maintenance of equivalence of national food control systems (NFCS)
- Principles and guidelines on the use of remote audit and inspection in regulatory frameworks

Approval as new work:

- Reviewing and updating the *Principles for Traceability/Product Tracing as a Tool within a Food Inspection and Certification System* (CXG 60–2006)

The 27th Session of CCFICS (CCFICS27) is scheduled to convene from September 16–20, 2024, in Cairns, Australia. We are unable to determine if CCFICS27 will recommend adoptions or approvals at CAC47.

The Committee is expected to continue work on:

- Draft Consolidated Codex Guidelines related to Equivalence;
- Draft Guidelines on the Prevention and Control of Food Fraud;
- Draft revision and updating of the *Principles for Traceability/Product Tracing as a Tool Within a Food Inspection and Certification System* (CXG 60–2006);

- Discussion paper on guidance on appeals mechanism in the context of rejection of imported food; and
- Review and update of Appendix A—the list of emerging global issues.

Responsible Agencies: USDA/FSIS; HHS/FDA/CFSAN.

U.S. Participation: Yes.

Codex Committee on Food Labelling

The Codex Committee on Food Labelling (CCFL) drafts provisions on labeling applicable to all foods; considers, amends, and endorses draft specific provisions on labeling prepared by the Codex Committees drafting standards, codes of practice, and guidelines; and studies specific labeling problems assigned to it by the Codex Alimentarius Commission. The Committee also studies problems associated with the advertisement of food with particular reference to claims and misleading descriptions.

The Committee advanced the following items for consideration by CAC46 in November 2023:

Interim adoption at Step 5:

- Revision to the *General Standard for the Labelling of Pre-packaged Foods* (CXS 1–1985): provisions relevant to allergen labelling
- Guidelines on the Provision of Food Information for Pre-packaged Foods to be Offered Via E-Commerce
- Guidelines on the Use of Technology to Provide Food Information

Approval as new work:

- Amendment to the *General Standard for the Labelling of Pre-packaged Foods* (CXS 1–1985): Labelling of pre-packaged foods in joint presentation and multipack formats

The 48th Session of CCFL (CCFL48) will convene from October 27–November 1, 2024, in Quebec City, Canada. We are unable to determine if CCFL48 will recommend adoptions or approvals at CAC47.

The Committee is expected to continue work on:

- Proposed draft guidelines on the provision of food information for pre-packaged foods to be offered via e-commerce
- Proposed draft revision to the *General Standard for the Labelling of Prepackaged Foods* (CXS 1–1985): provisions relevant to allergen labeling and guidelines on precautionary allergen labeling
- Proposed draft guidelines on the use of technology to provide food information
- Discussion paper on the labelling of alcoholic beverages
- Discussion paper on the application of food labelling provisions in emergencies
- Discussion paper on trans fatty acids (TFA)
- Discussion paper on sustainability-related labelling: revision to the *General Guidelines on Claims* (CXG 1–1979)
- Discussion paper on future work and direction of CCFL: criteria for the evaluation and prioritization of work of CCFL

Responsible Agencies: HHS/FDA/CFSAN; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on General Principles

The Codex Committee on General Principles (CCGP) is responsible for procedural and general matters referred to it by the Codex Alimentarius Commission, including: (a) The review or endorsement of procedural provisions/texts forwarded by other subsidiary bodies for inclusion in the *Procedural Manual* of the Codex Alimentarius Commission; and (b) The consideration and recommendation of other amendments to the *Procedural Manual*.

The 33rd Session of CCGP (CCGP33) met in October 2–6, 2023, in Bordeaux, France. The relevant document is REP 24/GP. CCGP33 recommended minor updating and editorial amendments to the *Procedural Manual*, which were adopted by CAC46. The Committee is expected to continue discussions on:

- Revisions/amendments to Codex texts
- Format and structure of the Codex *Procedural Manual* (PM)
 - Proposed changes to Section 2 of the PM, Elaboration of Codex standards and related texts, Procedures for the elaboration of Codex standards and related texts, Part 7 Guide to the procedure for the amendment and revision of Codex standards and related texts, and related paragraphs
 - Procedures in section 3 of the PM, Guidelines for subsidiary bodies, to identify text to be updated, in line with current practices; and
 - Inconsistencies in language and superseded content of the PM, apart from section 3.

The 34th Session of CCGP (CCGP34) is expected to convene sometime in the spring of 2025 in France.

Responsible Agencies: USDA/TFAA/USCO.

U.S. Participation: Yes.

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling (CCMAS) defines the criteria appropriate to Codex Methods of Analysis and Sampling; serves as a coordinating body for Codex with other international groups working on methods of analysis and sampling and quality assurance systems for laboratories; specifies, on the basis of final recommendations submitted to it by the bodies referred to above, reference methods of analysis and sampling appropriate to Codex standards which are generally applicable to a number of foods; considers, amends if necessary, and endorses as appropriate, methods of analysis and sampling proposed by Codex (commodity) committees, except for those methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives; elaborates sampling plans and procedures, as may be required; considers specific sampling and analysis problems submitted to it by the Commission or any of its committees; and defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

CCMAS convened its 42nd Session (CCMAS42) from June 12–16, 2023, in Budapest, Hungary, with virtual report adoption on June 20, 2023. The relevant document is REP23/MAS. The Committee advanced the following items for consideration at CAC46 in November 2023:

Final adoption at Step 8 and 5/8:

- Revised *General Guidelines on Sampling* (CXG 50–2004)
- Methods of analysis/performance criteria for provisions in Codex commodity standards for fats and oils; cereals, pulses and legumes; and processed fruits and vegetables for inclusion in CXS 234–1999, and the sampling plans for total aflatoxins in certain cereals and cereal-based products including foods for infants and young children for inclusion in CXS 193–1995 (CXS 234–1999, CXS 193–1995)

CCMAS convened its 43rd Session (CCMAS43) from May 13–18, 2024, in Budapest, Hungary, with report adoption taking place on May 18, 2024. The relevant document is Draft REP24/MAS. CCMAS43 advanced the following items for consideration by CAC47 in November 2024:

- Methods of analysis and numeric performance criteria for sorbates, benzoic acid, and calcium for selected processed fruits and vegetables for adoption/revocation
- Sampling plan for methylmercury in fish for inclusion in the *General Standard for Contaminants and Toxins in Food and Feed* (CXS 193–1995)
- Revocation of the *General Methods for the Detection of Irradiated Foods* (CXS 231–2001)
- Methods of analysis for cereals, pulses, and legumes for adoption/revocation as part of the update to *Recommended Methods of Analysis and Sampling* (CXS 234–1999)
- Methods of analysis for fish and fishery products and new or amended performance criteria for adoption/revocation as part of the update to CXS 234–1999
- Methods of analysis for spices and culinary herbs for adoption
- Methods of analysis for olive and olive pomace oils and fish oil for adoption/revocation
- Document titled “Nitrogen to protein conversion factors” for adoption and inclusion as an Appendix to the CXS 234–1999

The 44th Session of CCMAS (CCMAS44) will convene from May 5–9, 2025 in Budapest, Hungary. The Committee is expected to continue work on:

- Amendments to certain provisions in CXS 234–1999
- Review the methods for fruit juices and cocoa products and chocolate
- Methods of analysis for precautionary allergen labeling
- Information document for the *General Guidelines on Sampling* (CXG 50–2004) e-book with sampling plans applications
- Numeric performance criteria for the determination of nitrate and nitrite ions in certain food matrices
- Harmonization of names and format for principles identified in CXS 234–1999

Responsible Agencies: HHS/FDA/CFSAN; USDA/Agricultural Marketing Service (AMS).

U.S. Participation: Yes.

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) is responsible for studying nutrition issues referred to it by the Codex Alimentarius Commission. The Committee also drafts general provisions, as appropriate, on nutritional aspects of all foods and develops standards, guidelines, or related texts for foods for special dietary uses in cooperation with other committees where necessary; considers, amends if necessary, and endorses provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines, and related texts.

The Committee had the following items which were considered by CAC46 in November 2023:

Final adoption at Step 8 and 5/8:

- Revised *Standard for Follow-up Formula* (CXS 156–1987), renamed as the *Standard for Follow-up Formula for Older Infants and Product for Young Children*

Interim adoption at Step 5:

- General Principles for establishing Nutrient Reference Values (NRVs-R) for persons aged 6 to 36 months

CCNFSDU will convene its 44th Session (CCNFSDU44) from October 2–6, 2024 in Dresden, Germany. We are unable to determine if CCNFSDU44 will recommend adoptions or approvals at CAC47.

The Committee is expected to continue work on:

- General Principles for the Establishment of Nutrient Reference Values—Requirements (NRVs-R) for persons aged 6–36 months
- Collection and review of information on the use, and use levels for five identified additives and their technological justification
- Methods of analysis for optional ingredients in the *Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants* (CXS 72–1981)
- Redrafting of the prioritization mechanism/emerging issues for new work proposals
- Redrafting of the discussion paper for harmonized probiotic guidelines
- Redrafting the discussion paper on guidelines for the nutritional composition of foods and beverages made from non-animal and insect protein sources

Responsible Agencies: HHS/FDA/CFSAN; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues (CCPR) is responsible for establishing maximum residue limits (MRLs) for pesticide residues in specific food items or in groups of food; establishing MRLs for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health; preparing priority lists of pesticides for evaluation by the Joint FAO/

WHO Meeting on Pesticide Residues (JMPR); considering methods of sampling and analysis for the determination of pesticide residues in food and feed; considering other matters in relation to the safety of food and feed containing pesticide residues; and establishing maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides in specific food items or groups of food.

The 54th Session of CCPR (CCPR54) convened in Beijing, China from June 26–July 1, 2023. The relevant document is REP23/PR. CCPR54 advanced the following items for consideration by CAC46 in November 2023:

Final adoption at Step 8 and 5/8:

- Over 400 Maximum Residue Limits (MRLs) for different combinations of pesticides/commodities
- Revision of the *Codex Classification of Foods and Animal Feeds* (CXA 4–1989):
 - the revised Class B–Primary food commodities of animal origin and Class E–Processed Foods of Animal Origin (All Types) and their respective table of representative commodities;
 - the consequential amendment to Table 2, Subgroup 12C Eggplant and eggplant-like commodities to the Principles and Guidance on the Selection of Representative Commodities for the Extrapolation of MRLs for Pesticides to Commodity Groups (CXG 84–2012);
 - the consequential amendment to the revised definition for the portion of the commodity to which MRLs apply and which is analyzed for Group 006—Tropical Fruits of Inedible Peel and 023—Oil fruits; and
 - the consequential amendments to the inclusion of new commodities/commodity codes in Class A—Primary food commodities of plant origin and Class D—Processed commodities of plant origin

CAC46 also discontinued work, approved new work, and revoked existing MRLs as recommended by CCPR54.

Revocation:

- The *Guidelines on Portion of Commodities to which MRLs Apply and which is Analyzed* (CXG 41–1993); this document was replaced by the revised *Classification of Foods and Animal Feeds* (CXA 4–1989) as the single, authoritative reference for the establishment of MRLs for pesticides

Approval as new work:

- Guidance for monitoring the purity and stability of reference materials of multi-class pesticides during prolonged storage

The 55th Session of CCPR (CCPR55) convened in Chengdu, China from June 3–8, 2024, in Chengdu, China. The relevant document is Draft REP24/PR. CCPR55 advanced the following items for consideration by CAC47 in November 2024:

For final adoption at Step 8 and 5/8:

- Over 275 Maximum Residue Limits (MRLs) for different combinations of pesticides/commodities

For interim adoption at Step 5:

- Guidelines for Monitoring the Stability and Purity of Reference Materials and Related Stock Solutions of Pesticides during Prolonged Storage

Other:

- Consequential amendments to CXLs for peppers groups and subgroups to implement the decision taken by CCPR on MRLs for okra
- Discontinuation/withdrawal of work and revocation of existing MRLs as recommended by CCPR55

The 56th Session of CCPR (CCPR56) will convene from May 19–24, 2025 in China. The Committee is expected to continue work on:

- Coordination of work between CCPR and the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF): Joint CCPR/CCRVDF Working Group on Compounds for Dual Use as both pesticides and veterinary drugs
- Management of unsupported compounds without public health concern scheduled for periodic review
- Establishment of Codex schedules and priority lists of pesticides for evaluation/re-evaluation by JMPR
- Enhancement of the operational procedures of CCPR and JMPR

Responsible Agencies: EPA/Office of Chemical Safety and Pollution Prevention (OCSPP)/Office of Pesticide Programs (OPP); USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) determines priorities for the consideration of residues of veterinary drugs in foods and recommends MRLs for veterinary drugs. The Committee also develops codes of practice, as may be required, and considers methods of sampling and analysis for the determination of veterinary drug residues in food.

The Committee had the following items which were considered by CAC46 in November 2023:

Final adoption at Step 8 and Step 5/8:

- MRLs for ivermectin (sheep, pigs, and goats—fat, kidney, liver, and muscle)
- MRLs for nicarbazine (chicken)
- MRLs extrapolated to ruminants and finfish
- MRLs for zilpaterol hydrochloride (cattle kidney, liver, muscle)

The 27th Session of CCRVDF (CCRVDF27) is scheduled to convene from October 21–25, 2024. The CCRVDF27 location and agenda are currently unavailable, and we are unable to determine if CCRVDF27 will recommend adoptions or approvals at CAC47. The Committee is expected to continue work on:

- Extrapolation of MRLs between species and to edible offal tissues
- Establishment of action levels for residues of veterinary drugs in edible tissues caused by unavoidable and unintended carryover of veterinary drug residues in animal feed
- Coordination between CCRVDF and CCPR on issues affecting both committees (e.g., harmonization of MRLs for similar edible commodities of animal origin; harmonization of risk assessment methodologies; data-sharing for dual-use compounds)
- Priority List of veterinary drugs requiring evaluation or re-evaluation by JECFA

Responsible Agencies: HHS/FDA/Center for Veterinary Medicine (CVM); USDA/FSIS.
U.S. Participation: Yes.

Codex Committee on Spices and Culinary Herbs

The Codex Committee on Spices and Culinary Herbs (CCSCH) is responsible for elaborating worldwide standards for spices and culinary herbs in their dried and dehydrated state in whole, ground, and cracked or crushed form. CCSCH also consults, as necessary, with other international organizations in the standards development process to avoid duplication.

The 7th Session of CCSCH (CCSCH7) convened from January 29 to February 2, 2024, in Kochi, Kerala, India. The relevant document is REP24/SCH. CCSCH7 advanced the following items for consideration by CAC47 in November 2024:

For adoption at Step 8 and/or Step 5/8:

- draft standard for dried or dehydrated small cardamom
- draft standard for spices derived from dried or dehydrated fruits and berries—allspice, juniper berry and star anise
- draft standard for dried or dehydrated roots, rhizomes and bulbs—turmeric

For interim adoption at Step 5:

- draft standard for spices derived from dried or dehydrated fruits and berries—vanilla

For approval as new work:

- development of a standard for sweet marjoram
- development of a standard for dried seeds—coriander
- development of a standard for large cardamom
- development of a standard for cinnamon

The 8th Session of the CCSCH (CCSCH8) is expected to convene approximately 18 months following CCSCH7. The Committee is expected to continue work on:

- a standard for spices derived from dried or dehydrated fruits and berries—vanilla
- a standard for sweet marjoram
- a standard for dried seeds—coriander
- a standard for large cardamom
- a standard for cinnamon
- a potential update to the template for spices and culinary herbs standards

Responsible Agencies: USDA/AMS; HHS/FDA/CFSAN.

U.S. Participation: Yes.

Adjourned Codex Commodity Committees

Several Codex Alimentarius Commodity Committees have adjourned *sine die*. The following Committees fall into this category:

Cereals, Pulses and Legumes—Adjourned *sine die* 2020

Responsible Agency: HHS/FDA/CFSAN.
U.S. Participation: Yes.

Cocoa Products and Chocolate—Adjourned *sine die* 2001

Responsible Agency: HHS/FDA/CFSAN.
U.S. Participation: Yes.

Meat Hygiene—Adjourned *sine die* 2003

Responsible Agency: USDA/FSIS.
U.S. Participation: Yes.

Milk and Milk Products—Adjourned *sine die* 2017

Responsible Agency: USDA/AMS; HHS/FDA/CFSAN.
U.S. Participation: Yes.

Natural Mineral Waters—Adjourned *sine die* 2008

Responsible Agency: HHS/FDA/CFSAN.
U.S. Participation: Yes.

Processed Fruits and Vegetables—Adjourned *sine die* 2020

Responsible Agency: USDA/AMS; HHS/FDA/CFSAN.
U.S. Participation: Yes.

Sugars—Adjourned *sine die* 2019

Responsible Agency: HHS/FDA/CFSAN.
U.S. Participation: Yes.

Vegetable Proteins—Adjourned *sine die* 1989

Responsible Agency: USDA/ARS.
U.S. Participation: Yes.

FAO/WHO Regional Coordinating Committees

The FAO/WHO Regional Coordinating Committees define the problems and needs of the regions concerning food standards and food control; promote within the Committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulate the strengthening of food control infrastructures; recommend to the Commission the development of worldwide standards for products of interest to the region, including products considered by the Committees to have an international market potential in the future; develop regional standards for food products moving exclusively or almost exclusively in intra-regional trade; draw the attention of the Commission to any aspects of the Commission's work of particular significance to the region; promote coordination of all regional food standards work undertaken by international governmental and non-governmental organizations within each region; exercise a general coordinating role for the region and such other functions as may be entrusted to them by the Commission; and promote the use of Codex standards and related texts by members.

There are six regional coordinating committees:

- Coordinating Committee for Africa
- Coordinating Committee for Asia
- Coordinating Committee for Europe
- Coordinating Committee for Latin America and the Caribbean
- Coordinating Committee for the Near East
- Coordinating Committee for North America and the South West Pacific

Coordinating Committee for Africa

The Coordinating Committee for Africa (CAFRICA) convened its 24th Session (CAFRICA24) virtually from September 5–9, 2022, and expected to convene its 25th Session (CAFRICA25) in approximately two years' time following CAFRICA24. The CAFRICA25 date, location, and agenda are currently unavailable. CAC47 is not expected to consider any agenda items from CAFRICA.

Responsible Party: USDA/TFAA/USCO.
U.S. Participation: Yes (as an observer).

Coordinating Committee for Asia

The Coordinating Committee for Asia (CCASIA) convened its 22nd Session (CCASIA22) virtually from October 12–18, 2022, with report adoption taking place on October 21, 2022. The relevant document is REP23/ASIA. CCASIA22 agreed to advance the following items for consideration at CAC46 in November 2023:

For final adoption at Step 8 or Step 5/8:

- Proposed draft regional standard for soybean products fermented with *Bacillus* species;
- Proposed draft regional standard for cooked rice wrapped in plant leaves;
- Amendment to the labelling provisions for non-retail containers in relevant CCASIA regional standards.

For interim adoption at Step 5:

- Proposed draft regional standard for quick frozen dumpling.

CCASIA planned to convene its 23rd Session (CCASIA23) in approximately two years' time following CCASIA22. The date, location, and agenda for CCASIA23 are currently unavailable. CAC47 is not expected to consider any agenda items from CCASIA.

Responsible Party: USDA/TFAA/USCO.
U.S. Participation: Yes (as an observer).

Coordinating Committee for Europe

The Coordinating Committee for Europe (CCEURO) convened its 33rd Session (CCEURO33) from May 27–31, 2024, in Berlin, Germany. The relevant document is REP24/EURO. CCEURO33 agreed to advance the following items for consideration at CAC46 in November 2023:

- Reappointment of Germany as the Coordinator for Europe for a second term
- To request that the CAC address inclusion of the One Health approach, digitalization and loss of biodiversity, and collaboration with other international organizations in the Codex Strategic Plan 2026–2031

CCEURO plans to convene its 34th Session (CCEURO34) in approximately two and half years' time following CCEURO33.

Responsible Party: USDA/TFAA/USCO.
U.S. Participation: Yes (as an observer).

Coordinating Committee for Latin America and the Caribbean

The Coordinating Committee for Latin America and the Caribbean (CCLAC) will convene its 23rd Session (CCLAC23) virtually from July 22–26, 2024. CCLAC23 is expected to consider work relevant to the region; current and emerging food safety and quality in the region; a draft regional standard for *Castilla lulo*; implementation of the Codex Strategic Plan in the LAC region; use and impact of Codex standards in the region; nomination of the Coordinator for LAC; and other business. We are unable to determine if CCLAC23 will recommend adoptions or approvals at CAC47.

Responsible Party: USDA/TFAA/USCO.
U.S. Participation: Yes (as an observer).

Coordinating Committee for North America and the South West Pacific

The Coordinating Committee for North America and the South West Pacific (CCNASWP) convened its 16th Session (CCNASWP16) in Nadi, Fiji, from January 30 to February 3, 2023. CCNASWP16 advanced the following item for consideration by CAC46 in November 2023:

For final adoption at Step 8:

- Draft regional standard for fermented noni fruit juice

CCNASWP is expected to convene its 17th Session (CCNASWP17) sometime in early 2025 in Fiji. The CCNASWP17 date, location, and agenda are currently unavailable.

Responsible Party: USDA/TFAA/USCO.

U.S. Participation: Yes.

Coordinating Committee for the Near East

The Coordinating Committee for the Near East (CCNE) convened its 11th Session (CCNE11) in 2023 in Rome, Italy from September 18–22, 2023. CCNE advanced the following items for consideration by CAC46 in November 2023:

For interim adoption at Step 5:

- Regional Standard for Maamoul
- CCNE is expected to convene its 12th session (CCNE12) in approximately two years' time following CCNE11. The CCNE12 date, location, and agenda are currently unavailable. CAC47 is not expected to consider any agenda items from CCNE.

Responsible Party: USDA/TFAA/USCO.

U.S. Participation: Yes (as an observer).

[FR Doc. 2024–14399 Filed 6–28–24; 8:45 am]

BILLING CODE 3420–3F–P

DEPARTMENT OF AGRICULTURE

Forest Service

Adoption of Categorical Exclusions Under Section 109 of the National Environmental Policy Act

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of adoption of multiple Categorical Exclusions from the Department of Commerce, the Department of Energy, the Bureau of Land Management, the National Telecommunications and Information Administration, and the Bureau of Indian Affairs.

SUMMARY: The U.S. Department of Agriculture, Forest Service, is adopting multiple categorical exclusions (CEs) from several agencies as listed: Department of Commerce CEs A4 and A6; Department of Energy CE B5.23; Bureau of Land Management CE D2; National Telecommunications and Information Administration CEs C–4 through C–8; and Bureau of Indian Affairs CE L.1 pursuant to section 109 of the National Environmental Policy Act for future application to Forest

Service decisions concerning land management activities that are similar in nature.. This notice describes the categories and details the consultation between the respective agencies.

DATES: The CE adoptions take effect on July 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Andrea Pahlevanpour, Assistant Director, Forest Service, Ecosystem Management Coordination, by phone at 771–216–0229 or via email to andrea.pahlevanpour@usda.gov.

Individuals who use telecommunications devices for the hearing impaired may call 711 to reach the Telecommunications Relay Service, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

I. National Environmental Policy Act and Categorical Exclusions

The National Environmental Policy (NEPA) (42 U.S.C. 4321–4347), as amended, requires all Federal agencies to consider the environmental impact of their proposed actions before deciding whether and how to proceed (42 U.S.C. 4321, 4332). The aims of NEPA are to ensure that agencies consider the potential environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process (42 U.S.C. 4332). NEPA created the Council on Environmental Quality, which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (Council on Environmental Quality regulations).

To comply with NEPA, agencies determine the appropriate level of review for a proposed action. Where required, these levels of review may be documented in an environmental impact statement (EIS), an environmental assessment (EA), or by reliance on a CE (40 CFR 1501.3). If a proposed action is likely to have significant environmental effects, the agency will prepare an EIS and document its decision in a record of decision. 40 CFR 1502, 1505.2. If the proposed action is not likely to have significant environmental effects or where the level of significance is unknown, the agency will prepare an EA, which involves a more concise analysis and process than an EIS (40 CFR 1501.5). Following preparation of an EA, the agency may reach a finding of no significant impact if the analysis shows that the action will have no significant effects (40 CFR 1501.6). If, following preparation of an EA, the agency finds that the proposed action will have significant effects, it will

prepare an EIS before issuing any decision to authorize the action (40 CFR 1501.6(a)(3)).

Under NEPA and the Council on Environmental Quality's implementing regulations, a Federal agency can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in its agency NEPA procedures 42 U.S.C. 4336(e)(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE covers a proposed action, the agency then evaluates the proposed action for any extraordinary circumstances in which a normally excluded action may have a significant effect (40 CFR 1501.4(b)). Responsible Officials in the Forest Service evaluate proposed actions for extraordinary circumstances in accordance with the Forest Service's NEPA implementing regulations at 36 CFR 220.6. If no extraordinary circumstances are found or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may rely on the CE to approve the proposed action without preparing an EA or an EIS, 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If extraordinary circumstances exist, the agency may nonetheless categorically exclude the proposed action if it determines that there are means to avoid the impacts or otherwise modify the action sufficient to avoid significant effects, 40 CFR 1501.4(b)(1).

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to “adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established.” 42 U.S.C. 4336c. To adopt another agency's categorical exclusion under section 109, the adopting agency: (1) identifies the relevant categorical exclusion listed in another agency's (“establishing agency”) NEPA procedures “that covers a category of proposed actions or related actions”; (2) consults with the establishing agency “to ensure that the proposed adoption of the categorical exclusion for a category of actions is appropriate”; (3) “identifies to the public the categorical exclusion that the [adopting] agency plans to use for its proposed actions”; and (4) documents adoption of the categorical exclusion. See 42 U.S.C. 4336c.

This notice documents the Forest Service's adoption of Department of Commerce CEs: A–4 (Siting, construction, operation of microwave or radio communication towers less than 200 feet in height without guy wires on

previously disturbed ground) and A-6 (Fiber optic cable to transmission structures or burying fiber optic cable in existing transmission line rights-of-way); Bureau of Land Management's CE D. Rangeland Management. (2) (Placement and use of temporary (not to exceed one month) portable corrals and water troughs, providing no new road construction is needed); Bureau of Indian Affairs CE L Roads and Transportation (1) (Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way); National Telecommunications and Information Administration's CEs C-4 through C-8 (concerning new telecommunication and broadband installation); and Department of Energy CE B5.23 (Electronic vehicle charging stations).

II. Additional Considerations Related to the Forest Service CEs

1. Decision Memo

The Forest Service requires at 36 CFR 220.6(e) that, "A supporting record is required and the decision to proceed must be documented in a decision memo for the categories of action in paragraphs (e)(1) through (25) of this section." For all the CEs adopted in this notice, the Forest Service will require a decision memo even if the originating agency's NEPA Procedures do not require it.

2. Extraordinary Circumstances

Forest Service NEPA regulations state that a CE may only be applied "if there are no extraordinary circumstances related to the proposed action" and if the proposed action is within a CE listed within a category as specified in regulations. 36 CFR 220.6(a). Forest Service NEPA regulations list seven resource conditions that "should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS", 36 CFR 220.6(b).

For the Department of the Interior CEs adopted from the Bureau of Land Management and the Bureau of Indian Affairs in this notice, the Forest Service will also apply the Department of the Interior's extraordinary circumstances criteria set forth in 43 CFR 46.215(a) through (l), which are slightly different from the Forest Service's resource conditions that should be considered in evaluating extraordinary circumstances.

III. Consultation With Departments and Agencies on CE Adoption

1. Department of Commerce Consultation

In April 2024, the Forest Service conducted consultation with the Department of Commerce on adoption of several CE categories. Through those consultation and coordination efforts, the Department and agency mutually agreed that the Forest Service's adoption of CE A-4 (communication towers) and CE A-6 (fiber optic cable) is appropriate. This notice documents the Forest Service's adoption of Department of Commerce CEs for such actions.

2. Department of Energy Consultation

In 2023, the Department of Energy conducted consultation with the Forest Service for adoption of a CE covering electric vehicle charging stations (B5.23). Through those consultation and coordination efforts, the Department and agency mutually agreed that the Forest Service's adoption of CE B5.23 (vehicle charging stations) is appropriate.

3. Bureau of Land Management Consultation

In June of 2024, the Forest Service completed consultation with the Bureau of Land Management regarding adoption of CE D. Rangeland Management. (2): "Placement and use of temporary (not to exceed one month) portable corrals and water troughs, providing no new road construction is needed." After several meetings, the agencies mutually agreed that the Forest Service's adoption of this CE is appropriate.

4. National Telecommunications and Information Administration Consultation

In May 2024, the Forest Service consulted with the National Telecommunications and Information Administration regarding adoption of CE's C-4 through C-8 concerning new telecommunication and broadband installation CEs. The agencies mutually agreed that Forest Service adoption of the CEs is appropriate.

5. Bureau of Indian Affairs Consultation

In May 2024, the Forest Service consulted with the Bureau of Indian Affairs to adopt CE L Roads and Transportation. (1) covering approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way). Through those consultation and coordination efforts, the agencies mutually agreed that the Forest

Service's adoption of CE L. Roads and Transportation. (1) is appropriate.

IV. Identification of CEs

1. Department of Commerce CEs

A-4: Siting, construction, operation of microwave or radio communication towers less than 200 feet in height without guy wires on previously disturbed ground.

A-6: Adding fiber optic cable to transmission structures or burying fiber optic cable in existing transmission line rights-of-way.

2. Department of Energy CE

B5.23: The installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Covered actions are limited to areas where access and parking are in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

"Previously disturbed or developed" refers to land that has been changed such that "its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available." 10 CFR 1021.410(g)(1).

The Department of Energy CE also includes additional conditions referred to as integral elements. (10 CFR part 1021 subpt. D, app. B) In order to apply this CE, the proposal must be one that would not

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of the Department of Energy or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or Comprehensive Environmental Response, Compensation and Liability

Act-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, State, or local government, or a Federally recognized Indian Tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, State, or local government, federally recognized Indian Tribe, or Native Hawaiian organization; or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally listed threatened or endangered species or their habitat (including critical habitat) or federally proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened species or their habitat; Federally protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands (as defined in 10 CFR 1022.4, "Compliance with Floodplain and Wetland Environmental Review Requirements: Definitions," or its successor);

(iv) Areas having a special designation such as Federally and State-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, State and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), "Farmland Protection Policy Act: Definitions," or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead

protection areas, and other water sources that are vital in a region); and
(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

3. Bureau of Land Management CE

D. Rangeland Management (2): Placement and use of temporary (not to exceed one month) portable corrals and water troughs, providing no new road construction is needed.

4. National Telecommunications and Information Administration CEs

C-4: New construction or improvement of land, operations, or support facilities, switching stations, maintenance facilities, and other non-tower structures supporting wired or wireless communications systems in a developed area and/or on previously disturbed ground with no more than 1 acre (0.4 hectare) of ground disturbance where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards and will not require additional support infrastructure.

C-5: Installing, operating, maintaining, retrofitting, upgrading, repairing, removing, and/or replacement of existing microwave or radio communication towers, instruments, structures, or buildings that do not require ground disturbance outside of the original footprint, including installing or collocating equipment such as antennas, microwave dishes, or power units. For communications towers at or below 199 feet, renovations and equipment additions must not cause the total height of the tower to exceed 199 feet. Existing structures must not be eligible for listing in the National Register of Historic Places.

C-6: New construction or improvement of temporary buildings or experimental equipment (e.g., trailers, prefabricated buildings, and test slabs) on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance, where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards and will not require additional support infrastructure.

C-7: New construction of self-supporting (for example, monopole or lattice) wireless communication towers at or below 199 feet with no guy wires that require less than 1 acre (0.4 hectare) of ground disturbance and where another Federal agency would not require an EA or EIS for its acquisition, installation, operations, or maintenance.

C-8: Acquisition, installation, reconstruction, repair by replacement, and operation of aerial or buried utility (for example, water, sewer, electrical), communication (for example, fiber optic cable, data processing cable and similar electronic equipment), and security systems that use existing rights-of-way, easements, grants of license, distribution systems, facilities, or similar arrangements.

5. Bureau of Indian Affairs CE

L. Roads and Transportation (1): Approval of utility installations along or across a transportation facility located in whole within the limits of the roadway right-of-way.

Dated: June 26, 2024.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024-14449 Filed 6-28-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS-24-SFH-0018]

Notice of Funding Availability for the Native Community Development Financial Institution Relending Demonstration Program FY 2024

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of funding availability (NOFA).

SUMMARY: The Rural Housing Service (RHS, Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces the availability of funding for applications under its Native Community Development Financial Institution (NCDFI) Relending Demonstration Program for fiscal year (FY) 2024. The purpose of this notice is to announce the opening and closing dates for receipt of applications for the NCDFI Relending Demonstration Program from eligible applicants, as well as submission requirements. These loans will be made to qualified NCDFIs to relend funds to low- and very low-income ultimate recipients to acquire, build, rehabilitate, improve, or relocate dwellings on Tribal Land in rural areas.

This program has the amount of \$5,000,000 available for FY 24. Applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications must be submitted using one of the following methods:

- *Paper submissions:* The Agency must receive a paper application by 4:30 p.m. local time, August 9, 2024.

- *Electronic submissions:* Electronic applications must be submitted via email to brian.hudson@usda.gov by 11:59 p.m. Eastern time on August 9, 2024.

The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The application dates and times are firm. The Agency will not consider any application received after the deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

ADDRESSES: Applicants wanting to apply for assistance may download the application documents and requirements as stated in this Notice from the NCDFI Relending Demonstration Program website: <https://www.rd.usda.gov/programs-services/single-family-housing-programs/native-community-development-financial-institution-relending-demonstration-program>.

Applicants may also request paper application packages from the Rural Development National Office by emailing brian.hudson@usda.gov.

Applications can be mailed or delivered to: USDA Rural Development, Washington State Office, Attention: Andria Hively, 1835 Black Lake Blvd. SW, Olympia, WA 98512.

FOR FURTHER INFORMATION CONTACT: Brian Hudson, Finance and Loan Analyst, Single Family Housing Direct Division, Special Programs and New Initiatives Branch at (608) 697-7725 (voice) (this is not a toll-free number) or brian.hudson@usda.gov.

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Housing Service (RHS).

Funding Opportunity Title: Native Community Development Financial Institution (NCDFI) Relending Demonstration Program.

Announcement Type: Notice of Funding Availability (NOFA).

Assistance Listing (AL) Numbers: 10.410.

Dates: Completed applications and supporting materials must be received by mail at USDA Rural Development, Washington State Office, Attention: Andria Hively, 1835 Black Lake Blvd. SW, Olympia, WA 98512 or via email at brian.hudson@usda.gov by 11:59 p.m. Eastern Time (ET) on August 9, 2024. Late or incomplete applications will not be accepted.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at <https://www.rd.usda.gov/priority-points>):

- *Addressing Climate Change and Environmental Justice:* Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

- *Advancing Racial Justice, Place-Based Equity, and Opportunity:* Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and

- *Creating More and Better Market Opportunities:* Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure.

For further information, visit <https://www.rd.usda.gov/priority-points>.

A. Program Description

1. Purpose of the Program

The purpose of the NCDFI Relending Demonstration Program is to increase homeownership opportunities for Native American Tribes, Alaska Native Communities, and Native Hawaiian communities in rural areas.

Additionally, the program will provide capital to NCDFIs; loans made to NCDFIs will be re-lent to the ultimate recipients (low- and very low-income people who will live in Indian Country and need affordable, modest single-family homes).

2. Statutory Authority

Funding is authorized pursuant to the Consolidated Appropriation Act, 2024, 42 U.S.C. 1472; Public Law 118-42; and the program is authorized by section 502 of the Housing Act of 1949 (42 U.S.C. 1472) and implemented by 7 CFR part 3550.

3. Definitions

The definitions and terms applicable to the loan process for ultimate recipients can be found at 7 CFR 3550.10 and 2 CFR part 211. Additional definitions applicable to this notice are listed below:

- a. *Native Community Development Financial Institution (NCDFI).* An entity

that has been certified as a community development financial institution by the Secretary of the Treasury; that is not less than 50 percent owned or controlled by members of Indian Tribes, Alaska Native communities, or Native Hawaiian communities; and for which not less than 50 percent of the activities of the entity serve Indian Tribes, Alaska Native communities, or Native Hawaiian communities.

- b. *Native Hawaiian.* The term 'Native Hawaiian' has the meaning given the term in section 801 of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (25 U.S.C. 4221(9)).

- c. *Principals of NCDFI.* Members, officers, directors, and other individuals or entities directly involved in the operation and management (including setting policy) of an NCDFI.

- d. *Tribal Land.* Tribal Land includes any of the following:

- (i) any land located within the boundaries of—

- (A) an Indian reservation, pueblo, or rancharia; or

- (B) a former reservation within Oklahoma;

- (ii) any land not located within the boundaries of an Indian reservation, pueblo, or rancharia, the title to which is held—

- (A) in trust by the United States for the benefit of an Indian Tribe or an individual Indian;

- (B) by an Indian Tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

- (C) by a dependent Indian community;

- (iii) any land located within a region established pursuant to section 7(a) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1606(a));

- (iv) Hawaiian Homelands, as defined in section 801 of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (25 U.S.C. 4221(9)); or

- (v) those areas or communities designated by the Assistant Secretary of Indian Affairs of the Department of the Interior that are near, adjacent, or contiguous to reservations where financial assistance and social service programs are provided to Indians because of their status as Indians.

- e. *Ultimate recipient.* An individual that receives a mortgage loan from a NCDFI Relending Demonstration Program fund.

4. Application Awards

The Agency will review, evaluate and score applications received in response to this notice based on the provisions

found in this notice. Awards under the NCDFI Relending program will be made on a competitive basis using specific selection criteria contained in this notice. The Agency advises all interested parties that expenses incurred in applying for this Notice will be borne by the applicant and are at the applicant's sole risk.

B. Federal Award Information

Type of Award: Loan.

Fiscal Year Funds: FY 2024.

Available Funds: \$5,000,000.

Award Amounts: A minimum loan request of \$500,000 is required. Opportunity for awards larger than \$1 million will be evaluated and awarded based on program demand.

Anticipated Award Date: September 30, 2024.

Performance Period: A loan may be made by the Secretary to said applicant for a period of not to exceed thirty-three years from the making of the loan. The interest rate will be one percent. Interest and principal payments will be scheduled annually. The initial principal and interest payment will be deferred by the Agency for up to 3 years. Loan funds must be disbursed and delivered to the ultimate recipients within three years from the date of loan closing.

Renewal or Supplemental Awards: None.

Type of Assistance Instrument: Direct loan.

Approximate Number of Awards: The Agency anticipates making five to seven awards.

C. Eligibility Information

1. Eligible Applicants

Eligible entities for these competitively awarded loans include NCDFIs. Any delinquent debt to the Federal Government by the NCDFI or any principal of the NCDFI shall cause the NCDFI to be ineligible to receive any NCDFI Relending Demonstration Program loan funds as provided in 2 CFR parts 180 and 417. Agency loan funds may not be used to satisfy any such debt.

Debarment and suspension information is required in accordance with 2 CFR part 180 (OMB's Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)) supplemented by 2 CFR part 417 (Nonprocurement Debarment and Suspension), as applicable.

Non-Eligible Applicants

Applications will not be considered for funding if they do not provide

enough information to determine eligibility, are not suitable for evaluation, are missing required elements as stated in this notice, or have not closed on a previously awarded NCDFI Relending Demonstration Loan. All applications submitted must meet the eligibility requirements provided in this notice and demonstrate that the loans will be made to ultimate recipients who meet the eligibility criteria in 7 CFR 3550.53 <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XXXV/part-3550/subpart-B/section-3550.53>.

Ultimate Recipient Eligibility

(a) NCDFI Relending Demonstration Program loan funds must be used to provide direct loans made to eligible ultimate recipients in accordance with 7 CFR part 3550. Loans from the NCDFI to the ultimate recipient using the NCDFI Relending Demonstration Program fund must be used to buy, build, rehabilitate, improve, or relocate an eligible dwelling (7 CFR 3550.52(a)) on Tribal land for use by the borrower as a permanent residence. The interest rate charged for loans made by the NCDFI to the ultimate recipient must be lower than the maximum monthly interest rate charged for a Section 502 direct loan, available in any Rural Development office. The following regulatory reference apply to loans made to ultimate recipients:

(i) Eligible costs in accordance with 7 CFR 550.52(d). If an origination fee will be charged by the NCDFI, it may not exceed the maximum 'certified packaging body with an intermediary' fee listed in Handbook-1-3550, Attachment 3-A, as it appeared at the time of origination.

(ii) Loan restrictions in accordance with 7 CFR 3550.52(e).

(iii) Applicant eligibility requirements in accordance with 7 CFR 3550.53.

(iv) Calculation of income and assets in accordance with 7 CFR 3550.54.

(v) Site requirements in accordance with 7 CFR 3550.56 and must be located on Tribal lands.

(vi) Dwelling requirement in accordance with 7 CFR 3550.57.

(vii) Ownership requirements in accordance with 7 CFR 3550.58.

(viii) Security requirements in accordance with 7 CFR 3550.59, except that the NCDFIs need not use Agency closing forms, and security will be vested in the NCDFI and not the Agency.

For more information on how ultimate recipient loans can be processed, the Section 502 program Handbook-1-3550 can be found online

at: <https://rd.usdsa.gov/resources/directives/handbooks>.

2. Cost Sharing or Matching

A NCDFI that receives a loan under this section shall provide information on the use of matching funds. NCDFIs that match at least 20 percent of the amount will receive additional points.

(a) Matching funds must be in the form of cash or confirmed funding commitments. Matching funds must also be committed for a period of not less than the loan disbursement period of 3 years.

(b) In-kind contributions such as salaries, donated time and effort, real and nonexpendable personal property, or goods and services cannot be used as matching funds.

(c) The NCDFI is responsible for demonstrating that matching funds are available and committed. Matching funds may be provided by the NCDFI or a third party.

3. Discretionary Points

None.

4. Other

(a) The NCDFI must have been legally organized for a minimum of three years and indicate adequate experience. Adequate experience will be demonstrated for Applicants providing documentation indicating at least one-year of prior experience working with residential mortgage lending as of the closing date of this Notice. Applicants that do not have such experience may provide documentation regarding other related experience to effectively and efficiently manage and repay a loan through this demonstration program (e.g., staff expertise, other loan products, homeownership training, counseling and assistance, etc.) The Agency may review such information and may consider any such information to indicate adequate experience.

(b) Proposals must be structured to utilize the funds within 3 years from the date of award.

(c) A six percent reserve for bad debt or Loan Loss Reserve (LLR) will be required.

(d) Loan funds may not be used for payment of the NCDFI's administrative costs or expenses.

(e) *Requests to make loans to ultimate recipients.* Prior concurrence is required when a NCDFI requests a disbursement of the NCDFI Relending Demonstration Program loan funds to make a loan to an ultimate recipient. The request for Agency concurrence in approval of a proposed loan to an ultimate recipient must include:

(i) A certification by the NCDFI that:

(A) The proposed ultimate recipient is eligible for the loan;

(B) The proposed loan is for eligible purposes;

(C) The proposed loan complies with all applicable statutes and regulations;

(ii) Copies of sufficient material from the ultimate recipient's application and the NCDFI's related files, to allow the Agency to determine the:

(A) Name and address of the ultimate recipient;

(B) Loan purposes;

(C) Interest rate and term; and

(D) Confirmation of matching funds.

(f) *NCDFI Relending Program Loan Servicing Requirements*. Servicing requirements are as follows:

Quarterly and semiannually reports are due 30 days after the end of the period (quarter or semi-annual as described below).

Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the NCDFI Relending Demonstration Program fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

These reports shall contain information on the NCDFI Relending Demonstration Program loan fund, and when other funds are included, the NCDFI Relending Demonstration Program portion of the report shall be segregated from the other sections.

The reports will be collected on a form provided by the Agency and must include information on the NCDFI Relending Demonstration Program lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the NCDFI has financed. When other funds are included in the reports, the NCDFI Relending Demonstration portion of the report shall be segregated from the other sections.

(g) *Loan Closing Information*

The selected NCDFI will be issued a Letter of Conditions and be required to Complete Form RD 1942–46, “Letter of Intent to Meet Conditions”, as applicable. Conditions may include but are not limited to completion of:

Form SF 3881, “ACH Vendor Payment Enrollment Form”

Form SF 270, “Request for Advance or Reimbursement”

HUD Form 935.2, “Affirmative Fair Housing Marketing Plan”

Form RD 400–8, “Compliance Review”

The selected NCDFI will execute Form RD 1940–1, “Request for Obligations of Funds” prior to obligation.

The NCDFI will work with USDA to prepare all necessary documents to close and secure the loan subject to USDA review and concurrence.

The NCDFI will be required to execute a Loan Agreement, Security Agreement, Promissory Note, and Deposit Agreement at closing. These items are available for review at <https://www.rd.usda.gov/programs-services/single-family-housing-programs/native-community-development-financial-institution-relending-demonstration-program>.

A Financing Statement under the Uniform Commercial Code will be filed against the NCDFI Relending Demonstration Program loan funds account.

All applications submitted must meet the eligibility in this notice and demonstrate the loans will be made to ultimate recipients who meet the eligibility criteria in 7 CFR 3550.53.

D. Application and Submission Information

1. Address To Request Application Package

Entities wishing to apply for assistance may acquire the application documents described in this Notice from the NCDFI Relending Demonstration Program website: <https://www.rd.usda.gov/programs-services/single-family-housing-programs>.

Applicants may also request paper application packages from the Rural Development National Office by emailing brian.hudson@usda.gov.

2. Content and Form of Application Submission.

(a) If the applicant is ineligible or the application is incomplete, the Agency will inform the applicant in writing of the decision, reasons therefore, and its appeal rights and no further evaluation of the application will occur.

(b) The Agency requires the following information to make an eligibility determination:

(i) A completed Standard Form (SF)–424, “Application for Federal Assistance.”

(ii) A written work plan to demonstrate the feasibility of the

NCDFI's ability to meet the objectives of this notice. The plan must, at a minimum:

(A) Documentation demonstrating the NCDFI's ability to administer NCDFI Relending Demonstration Program funds in accordance with the provisions of this notice. To adequately demonstrate the ability to administer the program, the NCDFI must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the NCDFI's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the NCDFI and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(B) Documentation demonstrating the NCDFI's ability to commit financial resources under the control of the NCDFI to the establishment of NCDFI Relending Demonstration Program. This should include a statement of the sources of non-Agency funds for administration of the NCDFI's operations and financial assistance for projects;

(C) Documentation demonstrating a need for loan funds and project the number of ultimate recipients to be assisted. As a minimum, the NCDFI should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the NCDFI's mission and strategy for NCDFI Relending Demonstration Program, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(D) Documentation demonstrating the NCDFI's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the NCDFI will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the NCDFI to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees (the origination fee may not exceed the

maximum ‘certified packaging body with an intermediary’ fee listed in Handbook–1–3550, Attachment 3–A), rates (the proposed rate must be below the monthly Section 502 Program interest rate, available at any rural development office), terms (must be in accordance with the requirements provided at 7 CFR 3550.53), collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient’s accomplishments, and reporting requirements by the ultimate recipient’s management must be addressed by the NCDFI’s relending plan;

(E) Documentation providing a set of goals, strategies, and anticipated outcomes for the NCDFI’s program. Outcomes should be expressed in quantitative or observable terms such as the number of homeowners assisted, and the number of homes financed, and should relate to the purpose of NCDFI Relending Demonstration Program; and

(F) Documentation providing specific information as to whether and how the NCDFI will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the NCDFI itself, describe the organizations providing such assistance and the arrangements between such organizations and the NCDFI.

(iii) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years; financial statements for the last 3 years, or from inception of the operations of the NCDFI if less than 3 years; and projected cash flow and earnings statements for at least 4 years supported by a list of assumptions showing the basis for the projections. Principal repayment on the NCDFI Relending Demonstration Program loan will not be scheduled during the first 3 years, thus the projections for the NCDFI Relending Demonstration Program fund must extend to include a year with a full annual installment on the NCDFI Relending Demonstration Program loan.

(iv) Statement of compliance with 2 CFR part 200 and last financial audit report.

(v) An agreement on a form provided by the Agency (*Form RD 400–4*, “Assurance Agreement,” and *Form RD 400–1*, “Equal Opportunity Agreement”) assuring compliance with Title VI of the Civil Rights Act of 1964.

(vi) Complete organizational documents, including documents such as certificate of CDFI status, certificate of good standing, by-laws and articles of incorporation, and evidence of authority to conduct the proposed activities.

(vii) A form provided by the Agency (*Form RD 1910–11*, “*Applicant Certification Federal Collection Policies for Consumer or Commercial Debts*”) in which the applicant certifies its understanding of the Federal collection policies for consumer or commercial debts.

(viii) A statement on a form provided by the Agency (*Exhibit A–1 of RD Instruction 1940–Q*) regarding lobbying.

3. System for Award Management and Unique Entity Identifier

(a) At the time of application, each applicant must have an active registration in the System for Award (SAM) before submitting its application in accordance with 2 CFR part 25. To register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instruction for obtaining the UEI are available at <https://sam.gov/content/entity-registration>.

(b) Applicants must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times

Completed applications must be submitted using one of the following methods:

- **Paper submissions:** The Agency must receive a paper application by 4:30 p.m. local time, August 9, 2024. Applications can be mailed or delivered to: USDA Rural Washington State Office, Attention: Andria Hively, 1835

Black Lake Blvd. SW, Olympia, WA 98512.

- **Electronic submissions:** Electronic applications must be submitted via email to brian.hudson@usda.gov by 11:59 p.m. Eastern time on August 9, 2024.

The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The application dates and times are firm. The Agency will not consider any application received after the deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

5. Intergovernmental Review

Intergovernmental Review under Executive Order 12372 is not required for this program.

6. Funding Restrictions

Expenses incurred in developing applications will be at the applicant’s cost.

7. Other Submission Requirements

None.

8. Other Federal Statutes

The applicant must certify to compliance with other Federal Statutes and regulations by completing the Financial Assistance General Certification and Representations in SAM, including, but not limited to the following:

(a) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964. Civil Rights compliance includes, but is not limited to the following:

(i) Collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure that ultimate recipients collect and maintain this data.

(ii) Race and ethnicity data will be collected in accordance with Office of Management and Budget (OMB) **Federal Register** Notice, “Revisions of the Standards for the Classification of Federal Data on Race and Ethnicity” (published October 30, 1997, at 62 FR 58782); Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by RD.

(b) The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the

Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order 12250, and 7 CFR part 1901, subpart E.

(c) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards), or any successor regulation.

(d) Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." For information on limited English proficiency and agency-specific guidance, go to <https://www.lep.gov/>.

(e) Federal Obligation Certification on Delinquent Debt. Risk Review: RD may request additional documentation from selected applicants in order to evaluate the financial, management, and performance risk posed by awardees as required by 2 CFR 200.206. Based on this risk review, RD may apply special conditions that correspond to the degree of risk assessed.

E. Application Review Information

1. Criteria

All eligible and complete applications will be evaluated and scored based on the selection criteria contained in this notice. Failure to address any of the application criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

For applicants meeting all the eligibility, application and submission requirements, the Rural Development National Office will use criteria in accordance with this notice as selection for the loan recipients. Each application and its accompanying statement of activities will be evaluated and, based solely on the information contained in the application, the applicant's proposal will be numerically rated on each criterion within the range provided. The highest-ranking applicant(s) will be selected based on the following criteria:

a. Years of experience in residential mortgage lending:

- (i) Less than one: 0 points.
- (ii) 1–2: 1 point.
- (iii) 3: 2 points.
- (iv) 4–5: 3 points.
- (v) More than 5: 4 points.

b. Years of experience in servicing residential mortgage loans:

- (i) Less than one: 0 points.
- (ii) 1–2: 1 point.
- (iii) 3: 2 points.
- (iv) 4–5: 3 points.
- (v) More than 5: 4 points.

c. Years of experience managing a loan fund:

- (i) Less than one: 0 points.
 - (ii) 1–2: 1 point.
 - (iii) 3: 2 points.
 - (iv) 4–5: 3 points.
 - (v) More than 5: 4 points.
- d. Years of experience managing federal funds:

- (i) Less than one: 0 points.
 - (ii) 1–2: 1 point.
 - (iii) 3: 2 points.
 - (iv) 4–5: 3 points.
 - (v) More than 5: 4 points.
- e. Matching funding:
- (i) Less than 20% 0 points.
 - (ii) More than 20%–40% 1 point.
 - (iii) More than 40%–60% 2 points.
 - (iv) More than 60%–80% 3 points.
 - (v) More than 80%–100% 4 points.

2. Review and Selection Process

The Agency reserves the right to offer the applicant less than loan funding requested. Rural Development National Office will utilize the following threshold project selection criteria for applicants in accordance with this notice.

- (a) Providing a financially feasible program for single family residential mortgage lending, which will result in affordable housing for very low- and low-income persons.
- (b) Serving Tribal Land's in an eligible rural area with housing for households of very low- and low-income.
- (c) Being an eligible applicant as defined in this notice.
- (e) Submitting a complete application as outlined in this notice.
- (f) Scoring Criteria.

3. Anticipated Announcement and Federal Award Dates

September 30, 2024.

F. Federal Award Administration Information

1. Federal Award Notices

Successful applicants will receive notification for funding from the USDA Rural Development National Office. Applicants must comply with all applicable statutes and regulations before the loan award will be obligated. The Agency will notify, in writing, applicants whose applications have been selected for funding. At the time of notification, the Agency will advise the applicant what further information and documentation is required along with a timeline for submitting the additional information. If the Agency determines it is unable to select the application for funding, the applicant will be informed in writing. Such notification will include the reasons the applicant was not selected. The Agency will advise applicants, whose applications did not

meet eligibility and/or selection criteria, of their review rights or appeal rights in accordance with 7 CFR 3550.4.

2. Administrative and National Policy Requirements

The loan recipient must include the required nondiscrimination statements in any of their advertisements and brochures. The loan recipient will be required to collect and maintain data provided by the ultimate recipients on race, sex, and national origin and ensure recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," (62 FR 58782), October 30, 1997. Data on recipients' sex will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

3. Reporting

Performance reporting, including applicable forms, narratives, and other documentation, are to be completed and submitted in accordance with the provisions of this notice and the Agreements referenced in the 'other' section of this notice. Further, all grantees must submit audited financial statements in accordance with 2 CFR part 200, subpart F, if applicable, or financial information covering the defined period of performance as outlined in this notice and the Agreements referenced in the 'other' section of this notice.

G. Federal Awarding Agency Contacts

Applicants wanting to apply for assistance may download the application documents and requirements as stated in this Notice from the NCDFI Relending Demonstration Program website: <https://www.rd.usda.gov/programs-services/single-family-housing-programs/native-community-development-financial-institution-relending-demonstration-program>.

Applicants may also request paper application packages from the Rural Development National Office by emailing brian.hudson@usda.gov.

H. Other Information

1. Paperwork Reduction Act

RHS has concluded that the reporting requirements contained in this NOFA will involve less than 10 persons and does not require an approval under the provisions of the Act. In accordance with the Paperwork Reduction Act of

1995, (44 U.S.C. 3501 *et seq.*), OMB must approve all collection of information as a requirement for “answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.” (44 U.S.C. 3502(3)(A).)

2. National Environmental Policy Act

All recipients under this Notice are subject to the requirements of 7 CFR part 1970 available at: <https://rd.usda.gov/resources/environmental-studies/environmental-guidance> and must comply in accordance with 7 CFR 3550.5 as noted below.

3. Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in Section D.3, of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

4. Civil Rights Requirements

The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 regarding Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

5. Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees and institutions participating in or administering USDA programs are prohibited from discrimination based on race, color, national origin, religion, sex, gender identity, (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print,

audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Federal Relay Service.

To file a program discrimination complaint, the complainant should complete the USDA Program Discrimination Complaint Form AD-3027 (PDF), which can be obtained online at: <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint>, from any USDA office, by calling (866) 632-9992 or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of the alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024-14353 Filed 6-28-24; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS-24-ELECTRIC-0017]

60-Day Notice of Proposed Information Collection: RUS-Request for Mail List Data—REA Borrowers; OMB Control No.: 0572-0051

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA) Rural Utilities Service (RUS or Agency) announces its intention to request a revision of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by August 30, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal, [regulations.gov](https://www.regulations.gov). In the “Search for dockets and documents

on agency actions” box, enter the docket number “RUS-24-ELECTRIC-0017,” and click the “Search” button. From the search results: click on or locate the document title: “60-Day Notice of Proposed Information Collection: RUS-Request for Mail List Data—REA Borrowers; OMB Control No.: 0572-0051” and select the “Comment” button. Before inputting comments, commenters may review the “Commenter’s Checklist” (optional). To submit a comment: Insert comments under the “Comment” title, click “Browse” to attach files (if available), input email address, select box to opt to receive email confirmation of submission and tracking (optional), select the box “I’m not a robot,” and then select “Submit Comment.”

Information on using [Regulations.gov](https://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “FAQ” link. All comments will be available for public inspection online at the Federal eRulemaking Portal ([regulations.gov](https://www.regulations.gov)).

FOR FURTHER INFORMATION CONTACT: Lisa Day, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Room 4227, South Building, Washington, DC 20250-1522. Telephone: (971) 313-4750. Email Lisa.Day@USDA.GOV.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget’s (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies the following information collection that RUS is submitting to OMB as a revision to an existing collection with Agency adjustment.

Title: RUS-Request for Mail List Data—REA Borrowers.

OMB Control Number: 0572-0051.

Expiration Date of Approval: December 31, 2024.

Type of Request: Extension of a currently approved collection.

Estimate of Burden: This collection of information is estimated to average 30 minutes per response.

Respondents: Not-for-profit institutions; Business or other for profit.

Estimated Number of Respondents: 869.

Estimated Number of Responses per Respondent: 869.

Estimated Total Number of Responses: 869.

Estimated Annual Reporting Burden on Respondents: 435 hours.

Estimated Total Annual Burden on Respondents: 435 hours.

Abstract: The RUS Form 87 is used for both the Rural Utilities Service Electric and Telecommunications programs to obtain the names and addresses of the borrowers' officials with whom they must communicate directly in order to administer the Agency's lending programs. Changes occurring at the borrower's annual meeting (e.g. the selection of board members, managers, attorneys, certified public accountants or other officials) make necessary the collection of information.

Comments are invited on:

(a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used.

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Lisa Day, Innovation Center, Regulations Management Division, at (971) 313.4750. Email: Lisa.Day@USDA.GOV.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2024-14425 Filed 6-28-24; 8:45 am]

BILLING CODE 3410-15-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Commonwealth of the Northern Mariana Islands 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 Commonwealth of the Northern Mariana Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 9:00 a.m. ChST on Wednesday, July 24, 2024 (7:00 p.m. ET on Tuesday, July 23, 2024). The purpose of this meeting is to debrief the testimony received on the Committee's project, *Access to Adequate Health Care for Incarcerated Individuals in the CNMI Judicial System*.

DATES: Wednesday, July 24, 2024, 9:00 a.m.—10:30 a.m. Chamorro Standard Time (Tuesday, July 23, 2024, 7:00 p.m.—8:30 p.m. Eastern Time)

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_6VoIXW45T9WlvwYHgwJldg **Join by Phone (Audio Only):** (833) 435-1820 USA Toll-Free; Meeting ID: 161 717 1144.

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, Commonwealth of the Northern Mariana Islands 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: Testimony Debrief
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: June 26, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-14448 Filed 6-28-24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a series virtual business meeting via ZoomGov on the following dates listed below. These virtual business meetings are for the purpose of planning their upcoming panels on maternal mortality.

DATES: These meetings will take place on:

- Wednesday, July 10, 2024, from 12:00 p.m.—1:00 p.m. CT
- Wednesday, July 31, 2024, from 12:00 p.m.—1:00 p.m. CT
- Wednesday, August 21, 2024, from 12:00 p.m.—1:00 p.m. CT

Zoom Webinar Link to Join (Audio/Visual):

Wednesday, July 10th: https://www.zoomgov.com/webinar/register/WN_dOTrnuoURhmRtPPMK5G97Q
 Wednesday, July 31st: https://www.zoomgov.com/webinar/register/WN_6t1ou_G0Q06fPvJZq1_qKQ
 Wednesday, August 21st: https://www.zoomgov.com/webinar/register/WN_abz7fZV9SeKysepswS7Teg

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO) at bpeery@usccr.gov or by phone at (202) 701-1376.

SUPPLEMENTARY INFORMATION:

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

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

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, Texas 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 atrevino@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Approval of Minutes
- III. Committee Discussion

IV. Public Comment V. Adjournment

Dated: June 26, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-14446 Filed 6-28-24; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-173]

Vanillin From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 25, 2024.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, 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) 482-2769.

SUPPLEMENTARY INFORMATION:

The Petition

On June 5, 2024, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of vanillin from the People's Republic of China (China) filed in proper form on behalf of Solvay USA LLC (the petitioner), a domestic producer of vanillin.¹ The Petition was accompanied by an antidumping duty (AD) petition concerning imports of vanillin from China.²

On June 7, 14, and 18, 2024, Commerce requested supplemental information from the petitioner regarding the Petition, to which the petitioner responded on June 11, 18, and 21, 2024, respectively.³

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties" dated June 5, 2024 (Petition).

² *Id.*

³ See Commerce's Letters, "Supplemental Questions," dated June 7, 2024 (First General Issues Questionnaire); "Supplemental Questions," dated June 14, 2024, and "Supplemental Questions," dated June 18, 2024; see also Memorandum, "Phone Call with Counsel to the Petitioner," dated June 17, 2024 (June 17 Memorandum); see also Petitioner's Letters, "Petitioner's Response to Supplemental Questions Regarding Common Issues and Injury Volume I of the Petitions," dated June 11, 2024 (First General Issues Supplement); "Petitioner's Response to Supplemental Questions Regarding Common Issues and Injury Volume I of the Petitions" dated June 18, 2024 (Second General Issues Supplement); and "Petitioner's Response to Supplemental Questions Regarding Countervailing Duties Allegations Volume III of the Petitions," dated June 21, 2024.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to Chinese producers of vanillin, and that such imports are materially injuring, or threatening material injury to, the industry producing vanillin in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), the alleged programs for which we are initiating this CVD investigation are supported by information in the Petition that is reasonably available to the petitioner.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.⁴

Period of Investigation

Because the Petition was filed on June 5, 2024, the period of investigation (POI) is January 1, 2023, through December 31, 2023.⁵

Scope of the Investigation

The merchandise covered by this investigation is vanillin from China. For a full description of the scope of this investigation, see the appendix to this notice.

Comments on Scope of the Investigation

Between June 7 and June 17, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁶ Between June 11 and 18, 2024, the petitioner provided clarifications and revised the scope language.⁷ The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for parties to raise issues

⁴ See section on "Determination of Industry Support for the Petition," *infra*.

⁵ See 19 CFR 351.204(b)(2).

⁶ See First General Issues Questionnaire; see also June 17 Memorandum.

⁷ See First General Issues Supplement at 2-4 and Exhibits I-Supp-2 and I-Supp-3; see also Second General Issues Supplement at 2-3.

regarding product coverage (*i.e.*, scope).⁸ Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.⁹ To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on July 15, 2024, which is 20 calendar days from the signature date of this notice. Any rebuttal scope comments, which may include factual information, must be filed by 5:00 p.m. ET on July 25, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that the parties consider relevant to the scope of the investigation be submitted during the time period identified above. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All scope comments must also be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹⁰ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided an opportunity for consultations with respect to the

Petition.¹¹ The GOC did not request consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹² they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹³

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like,

most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁴ Based on our analysis of the information submitted on the record, we have determined that vanillin, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁵

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in the appendix to this notice. To establish industry support, the petitioner provided its 2023 production of the domestic like product.¹⁶ The petitioner estimated the production of the domestic like product for the remaining U.S. producers of vanillin based on its knowledge of the industry.¹⁷ We relied on data provided by the petitioner for purposes of measuring industry support.¹⁸

Our review of the data provided in the Petition, the First General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established

¹⁴ See Petition at Volume I (pages 7–9 and Exhibit I–8); see also First General Issues Supplement at 7–8 and Exhibits I–Supp–3.

¹⁵ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Checklist, "Vanillin from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Vanillin from the People's Republic of China. This checklist is on file electronically via ACCESS.

¹⁶ See Petition at Volume I (Exhibits I–2 and I–11); see also First General Issues Supplement at 5, 8, and Exhibits I–Supp–4 and I–Supp–7.

¹⁷ See Petition at Volume I (page 2 and Exhibit I–2); see also First General Issues Supplement at 5–7 and Exhibits I–Supp–4, I–Supp–5, I–Supp–8 and I–Supp–9; and Second General Issues Supplement at 1–2.

¹⁸ See Petition at Volume I (page 2 and Exhibits I–2 and I–11); see also First General Issues Supplement at 5–8 and Exhibits I–Supp–4 and I–Supp–7; and Second General Issues Supplement at 1–2.

⁸ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (Preamble); see also 19 CFR 351.312.

⁹ See 19 CFR 351.102(b)(21) (defining "factual information").

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at: <https://access.trade.gov/help.aspx> and https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹¹ See Commerce's Letter "Invitation for Consultations to Discuss the Countervailing Duty Petition on Vanillin from the People's Republic of China," dated June 12, 2024.

¹² See section 771(10) of the Act.

¹³ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

industry support for the Petition.¹⁹ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²⁰ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²¹ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²² Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.²³

Injury Test

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁴

The petitioner contends that the industry’s injured condition is illustrated by a significant volume of subject imports; significant market share of subject imports; underselling and

price depression and/or suppression; decline in financial performance and operating income; declines in production, shipments, capacity utilization, and employment variables; and lost sales and revenues.²⁵ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁶

Initiation of CVD Investigation

Based upon our examination of the Petition and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of vanillin from China benefit from countervailable subsidies conferred by the GOC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all 56 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate an investigation of each program, see the CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available in ACCESS.

Respondent Selection

The petitioner identified 42 companies in China as producers and/or exporters of vanillin.²⁷ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event that Commerce determines that the number of companies identified is large, and it cannot individually examine each company based upon Commerce’s resources, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of vanillin from China during the POI under the appropriate Harmonized Tariff Schedule of the United States subheading(s) listed

in the “Scope of the Investigation” in the appendix.

On June 20, 2024, Commerce released CBP data on imports of vanillin from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the date of publication of this notice in the **Federal Register**.²⁸ Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce’s website at <https://www.trade.gov/administrative-protective-orders>.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that subject imports are materially injuring, or threatening material injury to, a U.S. industry.²⁹ A negative ITC determination will result in the investigation being terminated.³⁰ Otherwise, this CVD investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of

¹⁹ See Attachment II of the China CVD Initiation Checklist.

²⁰ *Id.*; see also section 702(c)(4)(D) of the Act.

²¹ See Attachment II of the China CVD Initiation Checklist.

²² *Id.*

²³ *Id.*

²⁴ See Petition at Volume I (pages 11–12 and Exhibit I–10).

²⁵ *Id.* at 10–21 and Exhibits I–5 and I–9 through I–15.

²⁶ See China CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Vanillin from the People’s Republic of China.

²⁷ See Petition at Exhibit I–7.

²⁸ See Memorandum, “Release of U.S. Customs and Border Protection Entry Data,” dated June 20, 2024.

²⁹ See section 703(a)(1) of the Act.

³⁰ *Id.*

allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³¹ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³² Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301(c), or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.³³ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; Commerce will grant untimely filed requests for the extension of time limits only in limited cases where we determine, based on 19 CFR 351.302(c), that extraordinary circumstances exist. Parties should review Commerce's regulations concerning time limits for submission of factual information prior to submitting

factual information in this investigation.³⁴

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁵ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁶ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letters of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).³⁷

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: June 25, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The merchandise covered by the investigation is vanillin, with the molecular formula $C_8H_8O_3$ or $C_9H_{10}O_3$. For purposes of this investigation, vanillin consists of natural vanillin, synthetic vanillin, bio-sourced synthetic vanillin (biovanillin) (each also known as 4-Hydroxy-3-methoxybenzaldehyde), and ethylvanillin (also known as 3-Ethoxy-4-hydroxybenzaldehyde). Vanillin covered by this investigation is a chemical compound with the Chemical Abstracts Service (CAS) number 121–33–5 or 121–32–4. Vanillin is

³⁴ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), and *Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws*, 89 FR 20766 (March 25, 2024).

³⁵ See section 782(b) of the Act.

³⁶ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at: https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

³⁷ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

covered by the investigation regardless of whether it is in a crystalline powder or crystal form. Vanillin is covered by the scope of the investigation, irrespective of purity, particle size, or physical form.

Merchandise subject to the investigation is specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2912.41.0000 and 2912.42.0000. The HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes only. The written description of the merchandise covered by the investigation is dispositive.

[FR Doc. 2024–14458 Filed 6–28–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–172]

Vanillin From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 25, 2024.

FOR FURTHER INFORMATION CONTACT:

Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

The Petition

On June 5, 2024, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of vanillin from the People's Republic of China (China) filed in proper form on behalf of Solvay USA LLC (the petitioner), a U.S. producer of vanillin.¹ The Petition was accompanied by a countervailing duty (CVD) petition concerning imports of vanillin from China.²

Between June 7 and 17, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petition in supplemental questionnaires.³ The petitioner responded to Commerce's supplemental

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated June 5, 2024 (the Petition).

² *Id.*

³ See Commerce's Letters, "Supplemental Questions," dated June 7, 2024 (First General Issues Questionnaire); "Supplemental Questions," dated June 7, 2024; Supplemental Questions," dated June 14, 2024; and "Supplemental Questions," dated June 14, 2024; see also Memorandum, "Phone Call with Counsel to the Petitioner," dated June 17, 2024 (June 17 Memorandum).

³¹ See 19 CFR 351.301(b).

³² See 19 CFR 351.301(b)(2).

³³ See 19 CFR 351.302.

questionnaires between June 11 and June 19, 2024.⁴

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of vanillin from China are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the vanillin industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition was accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigation.⁵

Period of Investigation

Because the Petition was filed on June 5, 2024, and because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the China LTFV investigation is October 1, 2023, through March 31, 2024.

Scope of the Investigation

The product covered by this investigation is vanillin from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

Between June 7 and 17, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁶ Between June 11 and 18, 2024, the petitioner provided

clarifications and revised the scope.⁷ The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁸ Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,⁹ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on July 15, 2024, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on July 25, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of this investigation be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹⁰ An electronically filed document must be

received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of vanillin to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all product characteristics comments must be filed by 5:00 p.m. ET on July 15, 2024, which is 20 calendar days from the signature date of this notice.¹¹ Any rebuttal comments must be filed by 5:00 p.m. ET on July 25, 2024, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the LTFV investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus,

⁴ See Petitioner's Letters, "Petitioner's Response to Supplemental Questions Regarding Common Issues and Injury Volume I of the Petitions," dated June 11, 2024 (First General Issues Supplement); *see also* "Petitioner's Response to Supplemental Questions Regarding Volume II of the Petitions," dated June 13, 2024; "Petitioner's Response to Supplemental Questions Regarding Common Issues and Injury Volume I of the Petitions," dated June 18, 2024 (Second General Issues Supplement); and "Petitioner's Response to Supplemental Questions Regarding Volume II of the Petitions," dated June 19, 2024.

⁵ See section on "Determination of Industry Support for the Petition," *infra*.

⁶ See First General Issues Questionnaire; *see also* June 17 Memorandum.

⁷ See First General Issues Supplement at 2–4 and Exhibits I–Supp–2 and I–Supp–3; *see also* Second General Issues Supplement at 2–3.

⁸ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

⁹ See 19 CFR 351.102(b)(21) (defining "factual information").

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also* *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011.

¹¹ See 19 CFR 351.303(b)(1).

to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹² they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹³

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁴ Based on our analysis of the information submitted on the record, we have determined that vanillin, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁵

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry

support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the appendix to this notice. To establish industry support, the petitioner provided its production of the domestic like product in 2023.¹⁶ The petitioner estimated the production of the domestic like product for the remaining U.S. producers of vanillin based on its knowledge of the industry.¹⁷ We relied on data provided by the petitioner for purposes of measuring industry support.¹⁸

Our review of the data provided in the Petition, the First General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.¹⁹ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (e.g., polling).²⁰ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²¹ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²² Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.²³

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁴

The petitioner contends that the industry’s injured condition is illustrated by a significant volume of subject imports; significant market share of subject imports; underselling and price depression and/or suppression; declines in financial performance and operating income; declines in production, shipments, capacity utilization, and employment variables; and lost sales and revenues.²⁵ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁶

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate an LTFV investigation of imports of vanillin from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the China AD Initiation Checklist.

U.S. Price

The petitioner based export price (EP) on average unit values derived from official import statistics for imports of vanillin from China into the United States during the POI.²⁷ The petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.²⁸

Normal Value

Commerce considers China to be an NME country.²⁹ In accordance with

¹² See section 771(10) of the Act.

¹³ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

¹⁴ See Petition at Volume I (pages 7–9 and Exhibit I–8); see also First General Issues Supplement at 7–8 and Exhibit I–Supp–3; and Second General Issues Supplement at 2–3.

¹⁵ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Checklist, “Vanillin from the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice (China AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Vanillin from the People’s Republic of China. This checklist is on file electronically via ACCESS.

¹⁶ See Petition at Volume I (Exhibits I–2 and I–11); see also First General Issues Supplement at 5, 8, and Exhibits I–Supp–4 and I–Supp–7.

¹⁷ See Petition at Volume I (page 2 and Exhibit I–2); see also First General Issues Supplement at 5–7 and Exhibits I–Supp–4, I–Supp–5, I–Supp–8 and I–Supp–9; and Second General Issues Supplement at 1–2.

¹⁸ See Petition at Volume I (page 2 and Exhibits I–2 and I–11); see also First General Issues Supplement at 5–8 and Exhibits I–Supp–4 and I–Supp–7; and Second General Issues Supplement at 1–2.

¹⁹ See Attachment II of the China AD Initiation Checklist.

²⁰ *Id.*; see also section 732(c)(4)(D) of the Act.

²¹ See Attachment II of the China AD Initiation Checklist.

²² *Id.*

²³ *Id.*

²⁴ See Petition at Volume I (pages 11–12 and Exhibit I–10).

²⁵ *Id.* at 10–21 and Exhibits I–5 and I–9 through I–15.

²⁶ See China AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Vanillin from the People’s Republic of China.

²⁷ See China AD Initiation Checklist.

²⁸ *Id.*

²⁹ See, e.g., *Certain Freight Rail Couplers and Parts Thereof from the People’s Republic of China*:

section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of the China LTFV investigation. Accordingly, we base NV on FOPs valued in a surrogate market economy country in accordance with section 773(c) of the Act.

The petitioner claims that Chile is an appropriate surrogate country for China because it is a market economy that is at a level of economic development comparable to that of China and is a significant producer of comparable merchandise.³⁰ The petitioner provided publicly available information from Chile to value all FOPs.³¹ Based on the information provided by the petitioner, we believe it is appropriate to use Chile as a surrogate country for China to value all FOPs for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese producers/exporters was not reasonably available, the petitioner used its own product-specific consumption rates as a surrogate to value Chinese manufacturers' FOPs.³² Additionally, the petitioner calculated factory overhead, selling, general, and administrative expenses, and profit based on the experience of a Chilean producer of comparable merchandise.³³

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of vanillin from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance

with sections 772 and 773 of the Act, the estimated dumping margins are 1,173.85 and 1,231.35 percent *ad valorem*.³⁴

Initiation of LTFV Investigation

Based upon the examination of the Petition and supplemental questionnaire responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating an LTFV investigation to determine whether imports of vanillin from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioner named 40 companies in China as producers and/or exporters of vanillin.³⁵ Our standard practice for respondent selection in LTFV investigations involving NME countries is to select respondents based on quantity and value (Q&V) questionnaires in cases where Commerce has determined that the number of companies is large, and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and/or exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce determines that the number is large and decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Because there are 40 Chinese producers and/or exporters identified in the Petition, Commerce has determined that it will issue Q&V questionnaires to the largest producers and/or exporters that are identified in the U.S. Customs and Border Protection data for which there is complete address information on the record.³⁶

Commerce will post the Q&V questionnaires along with filing instructions on Commerce's website at <https://www.trade.gov/ec-adcvd-case-announcements>. Producers/exporters of vanillin from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and

can obtain a copy of the Q&V questionnaire from Commerce's website. Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on July 9, 2024, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305(b). As stated above, instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application. The specific requirements for submitting a separate rate application in an NME investigation are outlined in detail in the application itself, which is available on Commerce's website at <https://access.trade.gov/Resources/nme/nme-sep-rate.html>. The separate rate application will be due 30 days after publication of this initiation notice. Exporters and producers must file a timely separate rate application if they want to be considered for individual examination. Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response both to the Q&V questionnaire and to the separate rate application by the respective deadlines to receive consideration for separate rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that {Commerce} will now assign in its NME investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however,

Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, 88 FR 15372 (March 13, 2023), and accompanying Preliminary Decision Memorandum at 5, unchanged in *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances*, 88 FR 34485 (May 30, 2023).

³⁰ See China AD Initiation Checklist.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See Petition at Volume I (page 5 and Exhibit I-4); see also First General Issues Supplement at 1 and Exhibit I-8; and Second General Issues Supplement at 1 and Exhibit 1-2Supp-1.

³⁶ See Memorandum, "Release of U.S. Customs and Border Protection Entry Data," dated June 20, 2024.

that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the {weighted average} of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.³⁷

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the Government of China via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of vanillin from China are materially injuring, or threatening material injury to, a U.S. industry.³⁸ A negative ITC determination will result in the investigation being terminated.³⁹ Otherwise, this LTFV investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b)

of Commerce’s regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted⁴⁰ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁴¹ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁴² For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce’s regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in this investigation.⁴³

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁴⁴ Parties must use the certification formats provided in 19 CFR 351.303(g).⁴⁵ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁴⁶

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: June 25, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by the investigation is vanillin, with the molecular formula $C_8H_8O_3$ or $C_9H_{10}O_3$. For purposes of this investigation, vanillin consists of natural vanillin, synthetic vanillin, bio-sourced synthetic vanillin (biovanillin) (each also known as 4-Hydroxy-3-methoxybenzaldehyde), and ethylvanillin (also known as 3-Ethoxy-4-hydroxybenzaldehyde). Vanillin covered by this investigation is a chemical compound with the Chemical Abstracts Service (CAS) number 121–33–5 or 121–32–4. Vanillin is covered by the investigation regardless of whether it is in a crystalline powder or crystal form. Vanillin is covered by the scope of the investigation, irrespective of purity, particle size, or physical form.

Merchandise subject to the investigation is specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2912.41.0000 and 2912.42.0000. The HTSUS subheadings and CAS registry

⁴⁴ See section 782(b) of the Act.

⁴⁵ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at <https://access.trade.gov/Resources/filing/index.html>.

⁴⁶ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

³⁷ See Enforcement and Compliance’s Policy Bulletin No. 05.1, regarding, “Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving NME Countries,” (April 5, 2005), at 6 (emphasis added), available on Commerce’s website at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

³⁸ See section 733(a) of the Act.

³⁹ *Id.*

⁴⁰ See 19 CFR 351.301(b).

⁴¹ See 19 CFR 351.301(b)(2).

⁴² See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

⁴³ See 19 CFR 351.302; see also, e.g., *Time Limits Final Rule*.

numbers are provided for convenience and customs purposes only. The written description of the merchandise covered by the investigation is dispositive.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–840]

Certain Paper Plates From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Alignment of Final Determination With Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain paper plates (paper plates) from the Socialist Republic of Vietnam (Vietnam) during the period of investigation, January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). On February 21, 2024, Commerce published the notice of initiation of this countervailing duty (CVD) investigation.¹ On March 26, 2024, Commerce postponed the preliminary determination until June 24, 2024.²

For a complete description of the events that followed the initiation of

this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II 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>.

Scope of the Investigation

The products covered by this investigation are paper plates from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.⁶ For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available, and, because it finds that certain respondents and the Government of Vietnam did not act to the best of their ability to respond to Commerce's requests for information, it

³ *See* Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Certain Paper Plates from the Socialist Republic of Vietnam," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See* Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ *See* Initiation Notice, 89 FR at 13044.

⁶ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁷ For further information, *see* the "Use of Facts Otherwise Available and Adverse Inferences" section in the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 703(e)(1) of the Act, we preliminarily find that critical circumstances exist with respect to imports of subject merchandise from Vietnam for Xie Li Vietnam International Company (Xie Li), all other producers and exporters, and companies that were not responsive to Commerce's quantity and value (Q&V) questionnaire,⁸ but do not exist with respect to Go-Pak Paper Products Vietnam Co., Ltd. (Go-Pak). For a full discussion of our preliminary critical circumstances determination, *see* the "Preliminary Affirmative Determination of Critical Circumstances, in Part" section of the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent antidumping duty (AD) investigation of paper plates from Vietnam, based on a request made by the petitioner.⁹ Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than November 5, 2024, unless postponed.¹⁰

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or based entirely under section 776 of the Act.

⁷ *See* sections 776(a) and (b) of the Act.

⁸ *See* Commerce's Letter, "Quantity and Value Questionnaire," dated February 15, 2024.

⁹ *See* Petitioner's Letter, "Request for Alignment of Final Determination with Deadline in Concurrent AD Investigations," dated June 5, 2024.

¹⁰ *See* Certain Paper Plates from the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations, 89 FR 49833 (June 12, 2024).

In this investigation, Commerce calculated an individual estimated countervailable subsidy rate for Go-Pak that is not zero, *de minimis*, or based entirely under section 776 of the Act. As further discussed in the Preliminary Decision Memorandum, the individual estimated countervailable subsidy rate for Xie Li is based entirely upon section 776 of the Act. Therefore, Commerce is using the individual estimated subsidy rate calculated for Go-Pak as the all-others rate.

Rate for Non-Responsive Companies

Four potential exporters and/or producers of paper plates from Vietnam did not respond to Commerce's Q&V questionnaire and Xie Li did not

provide information requested in the Initial Questionnaire (*i.e.*, the non-responsive companies).¹¹ We find that, by not responding to the Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD subsidy rate for the non-responsive companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce's Q&V questionnaire, the non-responsive companies did not

cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the non-responsive companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available to the non-responsive companies, *see* "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Go-Pak Paper Products Vietnam Co., Ltd	5.48
Innovative Sonic Vietnam International	* 237.65
Ningbo Changya Plastic Vietnam Company	* 237.65
Ningbo Changya Plastic Vietnam	* 237.65
SCG Vietnam	* 237.65
Xie Li Vietnam International Company Limited	* 237.65
All Others	5.48

* Rate based on facts available with adverse inferences.

Disclosure

Commerce intends to disclose its calculations and analysis performed in connection with this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Suspension of Liquidation

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject

merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced and/or exported by the non-responsive companies and all other producers and/or exporters. In accordance with section 703(e)(2)(A) of the Act, for the non-responsive companies and all other producers and/or exporters, the suspension of liquidation shall apply to

unliquidated entries of merchandise from the exporters/producers identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹² Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹³

¹¹ The companies that failed to respond to Commerce's Q&V questionnaire are: (1) Innovative Sonic Vietnam International; (2) Ningbo Changya Plastic Vietnam Company; (3) Ningbo Changya Plastic Vietnam; and (4) SCG Vietnam.

¹² See 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

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 this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. 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).¹⁵

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. Requests should contain the party's name, address, and telephone number, the number of participants and whether any participant is a foreign national, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce 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.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC

will determine, before the later of 120 days after the date of this preliminary determination or 45 days after the final determination, whether imports of paper plates from Vietnam are materially injuring the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: June 24, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to these investigations is certain paper plates. Paper plates subject to these investigations may be cut from rolls, sheets, or other pieces of paper and/or paper board. Paper plates subject to these investigations have a depth up to and including two (2.0) inches, as measured vertically from the base to the top of the lip, or the edge if the plate has no lip. Paper plates subject to these investigations may be uncolored, white, colored, or printed. Printed paper plates subject to these investigations may have any type of surface finish, and may be printed by any means with images, text and/or colors on one or both surfaces. Colored paper plates subject to this investigation may be colored by any method, including but not limited to printing, beater-dyeing, and dip-dyeing. Paper plates subject to these investigations may be produced from paper of any type (including, but not limited to, bamboo, straws, bagasse, hemp, kenaf, jute, sisal, abaca, cotton inters and reeds, or from non-plant sources, such as synthetic resin (petroleum)-based resins), may have any caliper or basis weight, may have any shape or size, may have one or more than one section, may be embossed, may have foil or other substances adhered to their surface, and/or may be uncoated or coated with any type of coating.

The paper plates subject to these investigations remain covered by the scope of these investigations whether imported alone, or in any combination of subject and non-subject merchandise. When paper plates subject to these investigations are imported in combination with non-subject merchandise, only the paper plates subject to these investigations are subject merchandise.

The paper plates subject to these investigations include paper plates matching the above description that have been finished, packaged, or otherwise processed in a third country by performing finishing,

packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the paper plates. Examples of finishing, packaging, or other processing in a third country that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the paper plates include, but are not limited to, printing, application of other surface treatments such as coatings, repackaging, embossing, and application of foil surface treatments.

Excluded from the scope of these investigations are paper plates molded or pressed directly from paper pulp (including but not limited to unfelted pulp), which are currently classifiable under subheading 4823.70.0020 of the Harmonized Tariff Schedule of the United States (HTSUS).

Also excluded from the scope of these investigations are articles that otherwise would be covered but which exhibit the following two physical characteristics: (a) depth (measured vertically from the base to the top of the lip, or edge if no lip) equal to or greater than 1.25 inches but less than two (2.0) inches, and (b) a base not exceeding five (5.0) inches in diameter if round, or not exceeding 20 square inches in area if any other shape.

Also excluded from the scope of these investigations are paper bowls, paper buckets, and paper food containers with closeable lids.

Paper plates subject to these investigations are currently classifiable under HTSUS subheading 4823.69.0040. Paper plates subject to these investigations also may be classified under HTSUS subheading 4823.61.0040. If packaged with other articles, the paper plates subject to these investigations also may be classified under HTSUS subheadings 9505.90.4000 and 9505.90.6000. While the HTSUS subheading(s) are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Injury Test
- IV. Preliminary Affirmative Determination of Critical Circumstances, in Part
- V. Use of Facts Available and Adverse Inferences
- VI. Subsidies Valuation Information
- VII. Analysis of Programs
- VIII. Recommendation

[FR Doc. 2024–14406 Filed 6–28–24; 8:45 am]

BILLING CODE 3510–DS–P

¹⁴ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁵ See APO and Service Final Rule.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–165]

Certain Paper Plates From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain paper plates (paper plates) from the People's Republic of China (China). The period of investigation (POI) is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Eliza DeLong or Sun Cho, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878 or (202) 482–6458, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on February 21, 2024.¹ On March 26, 2024, Commerce postponed the preliminary determination until June 24, 2024.²

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics

discussed in the Preliminary Decision Memorandum is included as Appendix II 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>.

Scope of the Investigation

The products covered by this investigation are paper plates from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.⁶ For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available, and, because it finds that certain respondents and the Government of China did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁷ For further information, *see* the "Use of Facts Otherwise Available and Adverse

Inferences" section in the Preliminary Decision Memorandum.

Preliminary Affirmative Determination Critical Circumstances

In accordance with section 703(e)(1) of the Act, we preliminarily find that critical circumstances exist with respect to imports of subject merchandise from Fuzhou Hengli Paper Co., Ltd. (Fuzhou Hengli), the companies who did not respond to our quantity and value (Q&V) questionnaire (*i.e.*, the non-responsive companies),⁸ and all other producers and/or exporters. We also preliminarily find that critical circumstances do not exist with respect to imports of subject merchandise from Jinhua P&P Product Co., Ltd (Jinhua P&P). For a full discussion of our preliminary critical circumstances determination, *see* the "Preliminary Critical Circumstances" section of the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent antidumping duty (AD) investigation of paper plates from China, based on a request made by the petitioner.⁹ Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than November 5, 2024, unless postponed.¹⁰

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated total net

¹ *See Certain Paper Plates from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 89 FR 13043 (February 21, 2024) (*Initiation Notice*).

² *See Certain Paper Plates from the People's Republic of China and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 89 FR 20945 (March 26, 2024).

³ *See* Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Certain Paper Plates from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁵ *See Initiation Notice*, 89 FR at 13044.

⁶ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁷ *See* sections 776(a) and (b) of the Act.

⁸ The companies that failed to respond to Commerce's Q&V questionnaire are: (1) Ningbo Artcool Co., Ltd.; (2) Ningbo Fenghua Yongfa Printing Stationery Co., Ltd.; (3) Zhejiang Kingsun Eco-Pack Co., Ltd.; and (4) Zhejiang Lingrong Crafts Co., Ltd.

⁹ *See* Petitioner's Letter, "Petitioner's Request for Alignment of Final Determinations with Deadline in Concurrent AD Investigations," dated June 5, 2024.

¹⁰ *See Certain Paper Plates from the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 49833 (June 12, 2024).

subsidy rates for Fuzhou Hengli and Jinhua P&P that are not zero, *de minimis*, or based entirely on the facts otherwise available. Because Commerce calculated individual estimated countervailable subsidy rates for Fuzhou Hengli and Jinhua P&P that are not zero, *de minimis*, or based entirely on the facts otherwise available, we have preliminarily calculated the all-others rate using a weighted-average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged sales values.¹¹

Rate for Non-Responsive Companies

Four potential exporters and/or producers of paper plates from China

did not respond to Commerce's Q&V questionnaire.¹² We find that, by not responding to the Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD subsidy rate for the non-responsive companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce's Q&V questionnaire, the non-responsive companies did not cooperate to the best of their abilities in

this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the non-responsive companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available to the non-responsive companies, *see* "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Determination Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Fuzhou Hengli Paper Co., Ltd	11.53
Jinhua P&P Product Co., Ltd	3.54
Ningbo Artcool Co., Ltd	* 313.14
Ningbo Fenghua Yongfa Printing Stationery Co., Ltd	* 313.14
Zhejiang Kingsun Eco-Pack Co., Ltd	* 313.14
Zhejiang Lingrong Crafts Co., Ltd	* 313.14
All Others	10.64

* Rate based on facts available with adverse inferences.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend

liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced and/or exported by all companies except Jinhua P&P (*i.e.*, Fuzhou Hengli, the non-responsive companies, and all other producers and/or exporters). In accordance with section 703(e)(2)(A) of the Act, for Fuzhou Hengli, the non-

responsive companies, and all other producers and/or exporters, the suspension of liquidation shall apply to unliquidated entries of merchandise from the exporters/producers identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹³ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing

¹¹ See Memorandum, "Calculation of Subsidy Rate for All Others," dated concurrently with this notice.

¹² As noted above, these companies are: (1) Ningbo Artcool Co., Ltd.; (2) Ningbo Fenghua

Yongfa Printing Stationery Co., Ltd.; (3) Zhejiang Kingsun Eco-Pack Co., Ltd.; and (4) Zhejiang Lingrong Crafts Co., Ltd.

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) (*APO and Service Final Rule*).

each issue; and (2) 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 this investigation, 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 in this investigation. 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 via ACCESS within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants and whether any participant is a foreign national, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹⁷ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary

determination or 45 days after the final determination whether imports of paper plates from China are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: June 24, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise subject to this investigation is certain paper plates. Paper plates subject to this investigation may be cut from rolls, sheets, or other pieces of paper and/or paper board. Paper plates subject to this investigation have a depth up to and including two (2.0) inches, as measured vertically from the base to the top of the lip, or the edge if the plate has no lip. Paper plates subject to this investigation may be uncolored, white, colored, or printed. Printed paper plates subject to this investigation may have any type of surface finish, and may be printed by any means with images, text and/or colors on one or both surfaces. Colored paper plates subject to this investigation may be colored by any method, including but not limited to printing, beater-dyeing, and dip-dyeing. Paper plates subject to this investigation may be produced from paper of any type (including, but not limited to, bamboo, straws, bagasse, hemp, kenaf, jute, sisal, abaca, cotton inters and reeds, or from non-plant sources, such as synthetic resin (petroleum)-based resins), may have any caliper or basis weight, may have any shape or size, may have one or more than one section, may be embossed, may have foil or other substances adhered to their surface, and/or may be uncoated or coated with any type of coating.

The paper plates subject to this investigation remain covered by the scope of this investigation whether imported alone, or in any combination of subject and non-subject merchandise. When paper plates subject to this investigation are imported in combination with non-subject merchandise, only the paper plates subject to this investigation are subject merchandise.

The paper plates subject to this investigation include paper plates matching the above description that have been finished, packaged, or otherwise processed in a third country by performing finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the paper plates. Examples of finishing, packaging, or other processing in a third country that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the paper plates include, but are not limited to, printing,

application of other surface treatments such as coatings, repackaging, embossing, and application of foil surface treatments.

Excluded from the scope of this investigation are paper plates molded or pressed directly from paper pulp (including but not limited to unfelted pulp), which are currently classifiable under subheading 4823.70.0020 of the Harmonized Tariff Schedule of the United States (HTSUS).

Also excluded from the scope of this investigation are articles that otherwise would be covered but which exhibit the following two physical characteristics: (a) depth (measured vertically from the base to the top of the lip, or edge if no lip) equal to or greater than 1.25 inches but less than two (2.0) inches, and (b) a base not exceeding five (5.0) inches in diameter if round, or not exceeding 20 square inches in area if any other shape.

Also excluded from the scope of this investigation are paper bowls, paper buckets, and paper food containers with closeable lids.

Paper plates subject to this investigation are currently classifiable under HTSUS subheading 4823.69.0040. Paper plates subject to this investigation also may be classified under HTSUS subheading 4823.61.0040. If packaged with other articles, the paper plates subject to this investigation also may be classified under HTSUS subheadings 9505.90.4000 and 9505.90.6000. While the HTSUS subheading(s) are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Injury Test
- IV. Preliminary Affirmative Determination of Critical Circumstances, in Part
- V. Analysis of China's Financial System
- VI. Diversification of China's Economy
- VII. Use of Facts Available and Adverse Inferences
- VIII. Subsidies Valuation
- IX. Benchmarks and Interest Rates
- X. Analysis of Programs
- XI. Recommendation

[FR Doc. 2024-14405 Filed 6-28-24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the

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 *APO and Service Final Rule*, 88 FR at 67069.

¹⁷ See 19 CFR 351.310(d).

U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission automatically initiate and conduct reviews to determine whether revocation of an antidumping duty or a countervailing duty order or termination of an investigation suspended under section

704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for August 2024

Pursuant to section 751(c) of the Act, the following sunset reviews are scheduled for initiation in August 2024 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

Commerce contact

Antidumping Duty Proceedings

Fresh Tomatoes from Mexico, A-201-820 (5th Review)	Jacqueline Arrowsmith, (202) 482-5255.
Steel Racks from China, A-570-088 (1st Review)	Thomas Martin, (202) 482-3936.
Steel Trailer Wheels from China, A-570-090 (1st Review)	Mary Kolberg, (202) 482-1785.

Countervailing Duty Proceedings

Steel Racks from China, C-570-089 (1st Review)	Thomas Martin (202) 482-3936.
Steel Trailer Wheels from China, C-570-091 (1st Review)	Mary Kolberg, (202) 482-1785.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in August 2024.

Commerce's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in the sunset review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the notice of initiation.

Please note that if Commerce receives a notice of intent to participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the sunset review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has amended certain of its requirements

pertaining to the service of documents in 19 CFR 351.303(f).¹

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 13, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024-14461 Filed 6-28-24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty (AD) and countervailing duty (CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable July 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of sunset reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the sunset reviews of the following AD and CVD order(s) and suspended investigation(s):

¹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

DOC case No.	ITC case No.	Country	Product	Commerce contact
A-570-865	731-TA-899	China	Hot-rolled Carbon Steel Flat Products (4th Review).	Mary Kolberg, (202) 482-1785.
A-533-820	731-TA-900	India	Hot-rolled Carbon Flat Products (4th Review).	Steel Mary Kolberg, (202) 482-1785.
A-560-812	731-TA-901	Indonesia	Hot-rolled Carbon Steel Flat Products (4th Review).	Mary Kolberg, (202) 482-1785.
A-583-835	731-TA-906	Taiwan	Hot-rolled Carbon Steel Flat Products (4th Review).	Mary Kolberg, (202) 482-1785.
A-549-817	731-TA-907	Thailand	Hot-rolled Carbon Steel Flat Products (4th Review).	Mary Kolberg, (202) 482-1785.
A-823-811	731-TA-908	Ukraine	Hot-rolled Carbon Steel Flat Products (4th Review).	Mary Kolberg, (202) 482-1785.
A-570-916	731-TA-1122	China	Laminated Woven Sacks (3rd Review)	Thomas Martin, (202) 482-3936.
A-570-847	731-TA-749	China	Persulfates (5th Review)	Thomas Martin, (202) 482-3936.
A-570-925	731-TA-1136	China	Sodium Nitrate (3rd Review)	Thomas Martin, (202) 482-3936.
A-428-841	731-TA-1137	Germany	Sodium Nitrate (3rd Review)	Thomas Martin, (202) 482-3936.
A-570-086	731-TA-1417	China	Steel Propane Cylinders (1st Review)	Mary Kolberg, (202) 482-1785.
A-549-839	731-TA-1419	Thailand	Steel Propane Cylinders (1st Review)	Mary Kolberg, (202) 482-1785.
A-570-918	731-TA-1123	China	Steel Wire Garment Hangers (3rd Review) ..	Thomas Martin, (202) 482-3936.
A-570-972	731-TA-1186	China	Stilbenic OBAs (2nd Review)	Mary Kolberg, (202) 482-1785.
A-583-848	731-TA-1187	Taiwan	Stilbenic OBAs (2nd Review)	Mary Kolberg, (202) 482-1785.
C-533-821	701-TA-405	India	Hot-rolled Carbon Steel Flat Products (4th Review).	Mary Kolberg, (202) 482-1785.
C-560-813	701-TA-406	Indonesia	Hot-rolled Carbon Steel Flat Products (4th Review).	Mary Kolberg, (202) 482-1785.
C-549-818	701-TA-408	Thailand	Hot-rolled Carbon Steel Flat Products (4th Review).	Mary Kolberg, (202) 482-1785.
C-570-917	701-TA-450	China	Laminated Woven Sacks (3rd Review)	Jacqueline Arrowsmith, (202) 482-5255.
C-570-926	701-TA-453	China	Sodium Nitrate (3rd Review)	Jacqueline Arrowsmith, (202) 482-5255.
C-570-087	701-TA-607	China	Steel Propane Cylinders (1st Review)	Mary Kolberg, (202) 482-1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for sunset reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: <https://enforcement.trade.gov/sunset/>. All submissions in these sunset reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the notice of initiation. Because deadlines in sunset reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306. Note that Commerce has amended certain of its

requirements pertaining to the service of documents in 19 CFR 351.303(f).¹

Information Required From Interested Parties

Domestic interested parties, as defined in sections 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.²

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The

¹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023).

² See 19 CFR 351.218(d)(1)(iii).

required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of sunset reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning AD and CVD proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 21, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024-14459 Filed 6-28-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

Background

Each year during the anniversary month of the publication of an antidumping duty (AD) or countervailing duty (CVD) order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the U.S. Department of Commerce (Commerce) conduct an administrative review of that AD or CVD order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of

calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review (POR). We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of calculating AD rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*i.e.*, investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding

in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.¹ Section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology." When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting

¹ See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later

than 20 days after submission of initial Section D responses.

Opportunity To Request a Review: Not later than the last day of July 2024,² interested parties may request administrative review of the following

orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceedings	
BELGIUM: Citric Acid and Certain Citrate Salts, A-423-813	7/1/23-6/30/24
COLOMBIA: Citric Acid and Certain Citrate Salts, A-301-803	7/1/23-6/30/24
FRANCE: Methionine, A-427-831	7/1/23-6/30/24
INDIA:	
Corrosion-Resistant Steel Products, A-533-863	7/1/23-6/30/24
Fine Denier Polyester Staple Fiber, A-533-875	7/1/23-6/30/24
Polyethylene Terephthalate (Pet) Film, A-533-824	7/1/23-6/30/24
IRAN: In-Shell Pistachios, A-507-502	7/1/23-6/30/24
ITALY:	
Certain Pasta, A-475-818	7/1/23-6/30/24
Corrosion-Resistant Steel Products, A-475-832	7/1/23-6/30/24
JAPAN:	
Clad Steel Plate, A-588-838	7/1/23-6/30/24
Cold-Rolled Steel Flat Products, A-588-873	7/1/23-6/30/24
Polyvinyl Alcohol, A-588-861	7/1/23-6/30/24
Stainless Steel Sheet and Strip in Coils, A-588-845	7/1/23-6/30/24
Steel Concrete Reinforcing Bar, A-588-876	7/1/23-6/30/24
MALAYSIA:	
Steel Nails, A-557-816	7/1/23-6/30/24
Welded Stainless Steel Pressure Pipe, A-557-815	7/1/23-6/30/24
OMAN: Steel Nails, A-523-808	7/1/23-6/30/24
REPUBLIC OF KOREA:	
Corrosion-Resistant Steel Products, A-580-878	7/1/23-6/30/24
Fine Denier Polyester Staple Fiber, A-580-893	7/1/23-6/30/24
Passenger Vehicle and Light Truck Tires, A-580-908	7/1/23-6/30/24
Stainless Steel Sheet and Strip in Coils, A-580-834	7/1/23-6/30/24
Steel Nails, A-580-874	7/1/23-6/30/24
REPUBLIC OF TÜRKİYE:	
Certain Pasta, A-489-805	7/1/23-6/30/24
Steel Concrete Reinforcing Bar, A-489-829	7/1/23-6/30/24
SOCIALIST REPUBLIC OF VIETNAM:	
Certain Walk-Behind Lawn Mowers and Parts Thereof, A-552-830	7/1/23-6/30/24
Steel Nails, A-552-818	7/1/23-6/30/24
Welded Stainless Pressure Pipe, A-552-816	7/1/23-6/30/24
TAIWAN:	
Corrosion-Resistant Steel Products, A-583-856	7/1/23-6/30/24
Fine Denier Polyester Staple Fiber, A-583-860	7/1/23-6/30/24
Passenger Vehicle and Light Truck Tires, A-583-869	7/1/23-6/30/24
Polyethylene Terephthalate (Pet) Film, A-583-837	7/1/23-6/30/24
Stainless Steel Sheet and Strip in Coils, A-583-831	7/1/23-6/30/24
Steel Nails, A-583-854	7/1/23-6/30/24
THAILAND:	
Certain Carbon Steel Butt-Weld Pipe Fittings, A-549-807	7/1/23-6/30/24
Citric Acid and Certain Citrate Salts, A-549-833	7/1/23-6/30/24
Passenger Vehicle and Light Truck Tires, A-549-842	7/1/23-6/30/24
Weld Stainless Steel Pressure Pipe, A-549-830	7/1/23-6/30/24
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Carbon Steel Butt-Weld Pipe Fittings, A-570-814	7/1/23-6/30/24
Certain Chassis and Subassemblies Thereof, A-570-135	7/1/23-6/30/24
Certain Sodium Potassium Phosphate Salts, A-570-962	7/1/23-6/30/24
Certain Steel Grating, A-570-947	7/1/23-6/30/24
Circular Welded Carbon Quality Steel Pipe, A-570-910	7/1/23-6/30/24
Collated Steel Staples, A-570-112	7/1/23-6/30/24
Cold-Rolled Steel Flat Products, A-570-029	7/1/23-6/30/24
Corrosion-Resistant Steel Products, A-570-026	7/1/23-6/30/24
Fine Denier Polyester Staple Fiber, A-570-060	7/1/23-6/30/24
Certain Freight Rail Couplers and Parts Thereof, A-570-145	3/13/23-6/30/24
Persulfates, A-570-847	7/1/23-6/30/24
Quartz Surface Products, A-570-084	7/1/23-6/30/24
Xanthan Gum, A-570-985	7/1/23-6/30/24
UKRAINE: Oil Country Tubular Goods, A-823-815	7/1/23-6/30/24

² Or the next business day, if the deadline falls on a weekend, Federal holiday or any other day when Commerce is closed.

	Period
Countervailing Duty Proceedings	
INDIA:	
Corrosion-Resistant Steel Products, C-533-864	1/1/23-12/31/23
Polyethylene Terephthalate (Pet) Film, C-533-825	1/1/23-12/31/23
ITALY:	
Certain Pasta, C-475-819	1/1/23-12/31/23
Corrosion-Resistant Steel Products, C-475-833	1/1/23-12/31/23
REPUBLIC OF KOREA: Corrosion-Resistant Steel Products, C-580-879	1/1/23-12/31/23
REPUBLIC OF TÜRKİYE:	
Certain Pasta, C-489-806	1/1/22-12/31/22
Steel Concrete Reinforcing Bar, C-489-830	1/1/22-12/31/22
SOCIALIST REPUBLIC OF VIETNAM:	
Passenger Vehicle and Light Truck Tires, C-552-829	1/1/23-12/31/23
Steel Nails, C-552-819	1/1/23-12/31/23
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Freight Rail Couplers and Parts Thereof, C-570-146	3/3/23-12/31/23
Certain Walk-Behind Lawn Mowers and Parts Thereof, C-570-130	1/1/23-12/31/23
Certain Sodium and Potassium Phosphate Salts, C-570-963	1/1/23-12/31/23
Circular Welded Carbon Quality Steel Pipe, C-570-911	1/1/23-12/31/23
Cold-Rolled Steel Flat Products, C-570-030	1/1/23-12/31/23
Collated Steel Staples, C-570-113	1/1/23-12/31/23
Corrosion-Resistant Steel Products, C-570-027	1/1/23-12/31/23
Prestressed Concrete Steel Wire Strand, C-570-946	1/1/23-12/31/23
Quartz Surface Products, C-570-085	1/1/23-12/31/23
Steel Grating, C-570-948	1/1/23-12/31/23

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that Commerce conduct an administrative review. For both AD and CVD reviews, the interested party must specify the individual producers or exporters covered by an AD finding or an AD or CVD order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires Commerce to review those particular producers or exporters. If the interested party intends for Commerce to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or

exporter at the same time it files its request for review, in order for Commerce to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.³

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an AD administrative review.⁴ Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.⁵ In administrative reviews of AD orders on merchandise

³ See the Enforcement and Compliance website at <https://www.trade.gov/us-antidumping-and-countervailing-duties>.

⁴ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

⁵ In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of

from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate. Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an AD administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <https://access.trade.gov>.⁶ Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and

entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

⁶ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

each exporter or producer specified in the request. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁷

Commerce will publish in the **Federal Register** a notice of “Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation” for requests received by the last day of July 2024. If Commerce does not receive, by the last day of July 2024, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures “gap” period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled “*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*” in the **Federal Register**.⁸ On September 27, 2021, Commerce also published the notice entitled “*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*” in the **Federal Register**.⁹ The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any

companion order covering the same merchandise from the same country of origin.¹⁰

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS and, on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called “AISL-Annual Inquiry Service List.”¹¹

As mentioned in the *Procedural Guidance*, beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.¹² Accordingly, Commerce will update the annual inquiry service lists for the above-listed AD and CVD proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year’s annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from “Active” to “Needs Amendment” for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need

to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule*,¹³ once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties’ amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at <https://access.trade.gov>.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule*, Commerce stated that, “after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.”¹⁴ Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

⁷ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 86 FR 67069 (September 29, 2023).

⁸ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

⁹ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

¹⁰ *Id.*

¹¹ This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A-000-000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as “AISL-January Anniversary.” Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

¹² See *Procedural Guidance*, 86 FR at 53206.

¹³ See *Final Rule*, 86 FR at 52335.

¹⁴ *Id.*

Dated: June 25, 2024.

James Maeder,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024-14404 Filed 6-28-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Artificial Intelligence Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee (NAIAC or Committee) will meet virtually via web conference on Monday, July 22, 2024, from 1:00 p.m.–4:00 p.m. Eastern time. The primary purpose of this meeting is for the Committee to report working group findings, identify actionable recommendations, and receive public briefings. The briefings are from outside subject matter experts to the full Committee from areas such as industry, nonprofit organizations, the scientific community, the defense and law enforcement communities, and other appropriate organizations. The final agenda will be posted on the NIST website at <https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac>.

DATES: The NAIAC will meet on Monday, July 22, 2024, from 1:00 p.m.–4:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held virtually via web conference. Please note participation instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Designated Federal Officer, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975-2785, Email address: cheryl.gendron@nist.gov. Please direct any inquiries to the committee at naiac@nist.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.*, notice is hereby given that the NAIAC will meet virtually as set forth in the **DATES** section of this notice. The meeting will be open to the public.

The NAIAC is authorized by Section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116-283), in accordance with the provisions of the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. 1001 *et seq.* The Committee advises the President and the National Artificial Intelligence Initiative Office on matters related to the National Artificial Intelligence Initiative. Additional information on the NAIAC is available at ai.gov/naiac/.

The primary purpose of this meeting is for the Committee to report working group findings, identify actionable recommendations, and receive public briefings. The briefings are from outside subject matter experts to the full Committee from areas such as industry, nonprofit organizations, the scientific community, the defense and law enforcement communities, and other appropriate organizations. The agenda items may change to accommodate NAIAC business. The final agenda will be posted on the NAIAC Upcoming Meeting Page on the NIST website at <https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac>.

Comments: Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to submit comments in advance of the event. Please note that all comments submitted via email will be treated as public documents and will be made available for public inspection. All comments must be submitted via email with the subject line "July 22, 2024, NAIAC Public Meeting" to naiac@nist.gov by 5 p.m. Eastern Time, July 19, 2024. NIST will not accept comments accompanied by a request that part or all of the comment be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals. Members of the public may also submit written comments to the NAIAC at any time.

Virtual Meeting Registration Instructions: The meeting will be broadcast via web conference. Requests for special accommodations may be made by emailing cheryl.gendron@nist.gov. Registration is required to view the web conference. Instructions on how to register will be made available at <https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac>. Registration will

remain open until the conclusion of the meeting.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024-14430 Filed 6-28-24; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee) will hold an open meeting on Wednesday, August 7, 2024 from 8:30 a.m. to 5:00 p.m. Mountain Time and Thursday, August 8, 2024, from 8:30 a.m. to 2:00 p.m. Mountain Time. The primary purpose of this meeting is for the Committee to discuss the National Earthquake Hazards Reduction Program (NEHRP) agency activities presented in June and focus areas for the Committee's 2025 ACEHR Biennial Report on the Effectiveness of NEHRP. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP website at <https://www.nehrp.gov/committees/meetings.htm>.

DATES: The ACEHR will meet on Wednesday, August 7, 2024 from 8:30 a.m. to 5:00 p.m. Mountain Time and Thursday, August 8, 2024, from 8:30 a.m. to 2:00 p.m. Mountain Time.

ADDRESSES: The meeting will be held in the Katharine Blodgett Gebbie Laboratory Conference Room 1A106, Building 81, at the National Institute of Standards and Technology (NIST), 325 Broadway Street, Boulder, Colorado 80305, with an option to participate via web conference. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Tina Faecke, Management and Program Analyst, NEHRP, Engineering Laboratory, NIST. Ms. Faecke's email address is tina.faecke@nist.gov and her phone number is (240) 477-9841.

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C. 7704(a)(5) and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 1001 *et seq.*

The Committee is composed of 12 members, appointed by the Director of NIST, who were selected for their established records of distinguished service in their professional community, their knowledge of issues affecting NEHRP, and to reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. In addition, the Chairperson of the U.S. Geological Survey Scientific Earthquake Studies Advisory Committee serves as an ex-officio member of the Committee.

Pursuant to the FACA, as amended, 5 U.S.C. 1001 *et seq.*, notice is hereby given that the ACEHR will meet on the dates and at the times set forth in the **DATES** section of this notice. The meeting will be open to the public and will be held in-person and via web conference. Interested members of the public will be able to participate in the meeting from remote locations. The primary purpose of this meeting is for the Committee to discuss the NEHRP agency activities presented in June and focus areas for the Committee's 2025 ACEHR Biennial Report on the Effectiveness of NEHRP. The agenda may change to accommodate Committee business. The final agenda will be posted on the NEHRP website at <https://www.nehrp.gov/committees/meetings.htm>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda. Approximately fifteen minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received. Questions from the public will not be considered during this period. This meeting will be recorded. Public comments can be provided via email or by web conference attendance. All those wishing to speak must submit their request by email to Tina Faecke at tina.faecke@nist.gov by 5:00 p.m. Eastern Time, July 24, 2024. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate are invited to submit written statements electronically by email to tina.faecke@nist.gov.

Anyone wishing to attend this meeting via web conference must register by 5:00 p.m. Eastern Time, July 24, 2024, to attend. Please submit your full name, the organization you represent (if applicable), email address, and phone number to Tina Faecke at

tina.faecke@nist.gov. After pre-registering, participants will be provided with instructions on how to join the web conference. Any member of the public wishing to attend this meeting in person must pre-register to be admitted on the NIST campus. Please submit your full name, estimated time of arrival, email address, and phone number to Tina Faecke (tina.faecke@nist.gov) by 5:00 p.m. Eastern Time, July 24, 2024. Non-U.S. citizens must submit additional information; please contact Tina Faecke. For participants attending in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109-13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please email Tina Faecke or visit: http://www.nist.gov/public_affairs/visitor/.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024-14431 Filed 6-28-24; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-C-2024-0024]

Public Roundtable on Protections for Name, Image, Likeness, Other Indicia of Identity, and Reputation

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of public roundtable.

SUMMARY: The United States Patent and Trademark Office (USPTO) will hold a roundtable to seek public input regarding: whether existing laws protecting an individual's reputation and existing laws prohibiting unauthorized use of an individual's name, image, voice, likeness, or other indicia of identity (collectively referred to within this Notice as "NIL") are sufficient given the development and proliferation of artificial intelligence (AI) technology. The USPTO will seek this input to assist in its ongoing work to shape intellectual property (IP) policy, including NIL policy, and to assist in its work related to President Biden's Executive Order on the Safe,

Secure, and Trustworthy Development and Use of Artificial Intelligence.

DATES: The USPTO will hold a public roundtable, titled *Protecting NIL, Persona, and Reputation in the Age of Artificial Intelligence*, on August 5, 2024. The roundtable will consist of an in-person session and a separate virtual session. Individuals who wish to participate as a speaker at either session of the roundtable must submit a request to the email address below (at the **ADDRESSES** section of this Notice), and such requests must be received by 11:59 p.m. Eastern Time on July 31, 2024.

ADDRESSES: The in-person session of the roundtable will be held at the USPTO's headquarters, 600 Dulany Street, Alexandria, VA 22314. The virtual session of the roundtable will be conducted using the Webex videoconferencing platform. Requests to participate as a speaker at either session of this roundtable must be submitted via email to NILroundtable@uspto.gov and must be received by the date listed above (at the **DATES** section of this Notice).

Individuals submitting a request to participate must include in their request: their name, professional affiliation, contact information, a clear indication of the roundtable session in which they seek to participate (individuals may participate in either the in-person or virtual session, but not both), and a short—no longer than one page—summary of what they intend to address at the roundtable. Requests to participate as a speaker at the roundtable made in any other format will not be considered. If an email submission of a request to participate as a speaker is not feasible, please contact the USPTO using the contact information below for special instructions.

Members of the public interested in viewing the livestream of the roundtable must register using this link: <https://www.uspto.gov/about-us/events/public-roundtable-ai-and-protections-for-use-of-individuals-name-image-or-likeness>.

FOR FURTHER INFORMATION CONTACT: Jeffrey Martin, Trademark Attorney-Advisor, USPTO, jeffrey.martin@uspto.gov, 571-272-9300.

SUPPLEMENTARY INFORMATION:

I. Background

To advance its mission, the USPTO monitors and studies emerging technologies, including AI, evaluates whether current IP policies and protocols continue to encourage the development of new creations and technologies without unnecessarily locking up innovation or otherwise

impinging on the rights of others, and analyzes how emerging technologies impact IP rights. The USPTO engages with stakeholders, collaborates with other Federal agencies, and solicits views from the public to conduct this work. As appropriate, the USPTO develops new protocols, guidance, and policies, as well as policy recommendations for the Executive and Legislative Branches of the United States government, that incorporate input received during this process.

In June 2022, the USPTO established the Artificial Intelligence and Emerging Technology (AI/ET) Partnership to further elevate its engagement with stakeholders, government agencies, and the public on these issues. For more information on the AI/ET Partnership, visit <https://www.uspto.gov/artificial-intelligence>. The AI/ET Partnership has conducted numerous listening sessions on AI and IP issues, including a symposium in Los Angeles, California in March 2024, on AI's implications for patent, copyright, and NIL laws and policies.

The USPTO, through the Department of Commerce, is also the primary advisor to the President on IP policy matters. On October 30, 2023, President Biden issued the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, which is available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>. This Executive Order, in part, charges the USPTO with providing guidance to stakeholders and recommendations to the President regarding AI's impact on IP rights.

AI technology enables new and efficient ways to create digital media, including images, audio, and video. AI can be used to generate digital media that incorporates individuals' NIL or impacts individuals' reputations, with or without appropriate authorization. The unauthorized use of AI-generated NIL content can implicate Federal trademark and copyright laws, as well as state NIL laws.

Many state legislatures and courts have either enacted laws or established judicial precedents that protect individuals' NIL or reputations. In addition, some Federal statutes address certain misuses of NIL or reputation. For example, section 43(a) of the Lanham Act (15 U.S.C. 1125(a)) contains a Federal cause of action that individuals can use to address unauthorized uses of their NIL in certain commercial circumstances.

II. Roundtable

In support of its ongoing work to shape IP policy and evaluate emerging technologies' implications for IP rights, the USPTO will hold a roundtable to solicit input from the public on whether existing legal protections for individuals' NIL and reputations are sufficient, how these legal protections intersect with other IP laws, and how AI technology impacts existing legal protections for NIL and reputation. The roundtable will consist of an in-person session and a separate virtual session.

Members of the public interested in participating as a speaker at either session of the roundtable must submit such a request to NILroundtable@uspto.gov and provide their name, professional affiliation, contact information, a clear indication of the roundtable session in which they seek to participate (individuals may participate in either the in-person or virtual session, but not both), and a short—no longer than one page—summary of what they intend to address at the roundtable. Such requests must be submitted by the dates listed above (at the **DATES** section of this Notice). The USPTO will make every effort to accommodate requests to speak at the roundtable, subject to time limitations.

The roundtable will be livestreamed. The USPTO will post additional information about the roundtable, including a tentative agenda and instructions for members of the public to register to view the livestream, at <https://www.uspto.gov/about-us/events/public-roundtable-ai-and-protections-for-use-of-individuals-name-image-or-likeness>.

The USPTO will also record and transcribe the roundtable and will make available copies of the recording and transcript on the USPTO website at <https://www.uspto.gov/about-us/events/public-roundtable-ai-and-protections-for-use-of-individuals-name-image-or-likeness>.

The USPTO welcomes remarks from roundtable speakers on any issues relevant to the subject matter of this roundtable and is particularly interested in the following questions.

1. How does the use of unauthorized NIL content harm individuals? Does AI technology exacerbate the creation and use of unauthorized NIL content and harm to individuals? If so, how?
2. How can AI be used as a legitimate and constructive tool in circumstances where individuals grant permission to a third party to use their NIL?
3. Do technological mechanisms or protocols currently exist to identify AI-generated NIL content, to prevent or

deter unauthorized AI-generated NIL content, or to remove unauthorized AI-generated NIL content after it has been released? What other types of mechanisms or protocols exist, or should exist, to identify AI-generated NIL content or address unauthorized NIL content?

4. Currently, NIL is primarily protected via state law. In addition, some Federal statutes also address certain misuses of NIL. For example, the Lanham Act includes a provision—15 U.S.C. 1125(a)—that can be used to bring a Federal cause of action in certain circumstances involving NIL misuse. Are current legal protections for NIL rights sufficient? Why or why not?

5. There have been calls for a new Federal law to address unauthorized use of NIL content, including content generated by AI. Should Congress create a new Federal law to protect NIL? If so:

(a) Should current state NIL laws, such as state right of publicity laws, be preempted if a new Federal NIL law is enacted?

(b) What key elements should be incorporated in a new Federal NIL law?

(c) Should any new Federal NIL law protect against all unauthorized replicas of an individual's NIL or focus on unauthorized AI-generated replicas?

(d) Some state laws addressing NIL protect only well-known individuals. Likewise, many Federal circuit courts require a showing, among other elements, that a plaintiff is famous or recognizable by the public in order to succeed on a claim under 15 U.S.C. 1125(a). Should this requirement of fame or recognizability be included in a new Federal law protecting NIL rights? Why or why not?

(e) Should a new Federal law prohibit non-commercial uses of unauthorized NIL content, such as political deep fakes and revenge pornography?

(f) What types of enforcement mechanisms should be included in any new Federal NIL law?

(g) What elements should be included in a new Federal NIL law to help ensure it does not become obsolete due to rapid changes in AI technology?

(h) Section 230 of the Communications Decency Act states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Section 230 also expressly provides that "[n]othing in this section shall be construed to limit or expand any law pertaining to intellectual property." Should any new Federal NIL law be considered an "intellectual property law" for purposes

of Section 230 of the Communications Decency Act?

(i) How should Congress address First Amendment considerations in any new Federal NIL law?

(j) Should any new Federal NIL law be incorporated into the Lanham Act?

6. What limits, if any, should be placed on the voluntary transfer of rights concerning NIL to a third party? For example, should there be limits on the duration of such transfers?

7. Questions 1–6 above relate to individuals' NIL. How should these questions be answered in the context of individuals' and creators' reputations?

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–14455 Filed 6–28–24; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Federal Advisory Committee Meeting

AGENCY: Board of Visitors of the U.S. Air Force Academy, Department of the Air Force. **ACTION:** Notice of Federal advisory committee meeting. **SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Visitors (BoV) of the U.S. Air Force Academy (USAFA) will take place.

DATES: Open to the public Wednesday, July 17, 2024 from approximately 8:00 a.m. to 4:00 p.m. (Mountain Time).

ADDRESSES: The meeting will occur at the U.S. Air Force Academy, Colorado Springs, Colorado, as well as virtually. Members of the public will only be allowed to attend the meeting virtually. The link for the virtual meeting can be found at: <https://www.usafa.edu/about/bov/> and will be active approximately thirty minutes before the start of the meeting.

FOR FURTHER INFORMATION CONTACT:

Designated Federal Officer: Mr. Anthony R. McDonald, bov@afacademy.af.edu, 1660 Air Force Pentagon, Washington, DC 20330–1660.

Alternate Designated Federal Officer: Mr. James M. Wilmer, bov@afacademy.af.edu, 2304 Cadet Drive, Suite 3200, USAF Academy, CO 80840–5025.

USAFA BoV website: <https://www.usafa.edu/about/bov/>. Contains information on the Board of Visitors,

link to the virtual meeting, and approved meeting agenda.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001 *et seq.*), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In accordance with 10 U.S.C. 9455(e)(1), the BoV shall inquire into the morale, discipline, social climate, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

Written Statements: Any member of the public wishing to provide input to the Board of Visitors of the U.S. Air Force Academy should submit a written statement in accordance with 41 CFR 102–3.105(j) and 102–3.140 and section 1009(a)(3) of FACA. The public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in the open sessions of this public meeting. Written comments or statements should be submitted to the Alternate Designated Federal Officer via electronic mail, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat and/or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least five (5) business days prior to the meeting so they may be made available to the BoV Chairman for consideration prior to the meeting. Written comments or statements received after July, 9 2024, may not be provided to the BoV until its next meeting. Please note that because the BoV operates under FACA, all written comments will be treated as public documents and will be made available for public inspection.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024–14451 Filed 6–28–24; 8:45 am]

BILLING CODE 3911–44–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's website at <https://www.iwr.usace.army.mil/Missions/Navigation/Inland-Waterways-Users-Board/>.

DATES: The Army Corps of Engineers, Inland Waterways Users Board will conduct a meeting from 9:00 a.m. to 2:00 p.m. CDT on August 1, 2024.

ADDRESSES: The Inland Waterways Users Board meeting will be conducted at the St. Charles Convention Center, Grand Ballroom D, One Convention Center Plaza, St. Charles, MO 63303. The online virtual portion of the Inland Waterways Users Board meeting can be accessed at <https://usace1.webex.com/meet/ndc.nav>, Public Call-in: USA Toll-Free 844–800–2712, USA Caller Paid/International Toll: 1–669–234–1177 Access Code: 199 117 3596, Security Code 1234.

FOR FURTHER INFORMATION CONTACT: Mr. Paul D. Clouse, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–NDC, 7701 Telegraph Road, Casey Building (Room H221), Alexandria, VA 22315–3868; by telephone at 202–768–3157; or by email at Paul.D.Clouse@usace.army.mil. Alternatively, contact Mr. Steven D. Riley, an Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–NDC, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–659–3097; or by email at Steven.D.Riley@usace.army.mil.

SUPPLEMENTARY INFORMATION: This committee meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”), section 552b of title 5, U.S.C. (commonly known as the “Government in the Sunshine Act”), and sections 102–3.140

and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects, and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Agenda: At this meeting the agenda will include an update on the status of the Inland Waterways Trust Fund (IWTF); Fiscal Year 2024 funding for Navigation and the 2025 President's Budget for Navigation; Major Rehabilitation Reports; 2025 Capital Investment Strategy; Lock Modernization; Demopolis Lock Engineering Investigation; Bayou Sorrel Lock and Inner Harbor Navigation Canal Lock studies; Inland waterways modernization projects for Chickamauga Lock and the Kentucky Lock Addition on the Tennessee River, McClellan-Kerr Arkansas River Navigation System (MKARNS) Three Rivers, Arkansas, the Gulf Intracoastal Waterway (GIWW) Brazos River Floodgates and Colorado River Locks, Mississippi River-Illinois Waterway Navigation and Ecosystem Sustainability Program (NESP) Lock 25 and LaGrange Lock, Monongahela River Locks and Dams 2, 3 and 4 Replacements, and the Upper Ohio River Montgomery Lock.

Availability of Materials for the Meeting. A copy of the agenda or any updates to the agenda for the August 1, 2024, meeting will be available. The final version will be available at the meeting. All materials will be posted to the website for the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to participate in the meeting will begin at 8:30 a.m. on the day of the meeting. Participation is on a first-to-arrive basis. Any interested person may participate in the meeting, file written comments or statements with the committee, or make verbal comments during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: Individuals requiring any special accommodations related to the public meeting or seeking additional information about the procedures, should contact Mr. Paul Clouse, the committee DFO, or Mr. Steven Riley, an ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Clouse, the committee DFO, or Mr. Riley, a committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the public meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three business (3) days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is

relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Thomas P. Smith,

*Chief, Operations and Regulatory Division,
Directorate of Civil Works, U.S. Army Corp
of Engineers.*

[FR Doc. 2024–14413 Filed 6–28–24; 8:45 am]

BILLING CODE 3720–58–P

DENALI COMMISSION

Withdrawal of Denali Commission Fiscal Year 2025 Draft Work Plan

AGENCY: Denali Commission.

ACTION: Notice; withdrawal.

SUMMARY: On June 11, 2024, the Denali Commission published a **Federal Register** notice to allow public comment on the Denali Commission Fiscal Year 2025 Draft Work Plan. The notice is hereby withdrawn.

DATES: The document published at 89 FR 49162 on June 11, 2024, is withdrawn as of June 17, 2024.

FOR FURTHER INFORMATION CONTACT: Elinda Hetemi, Denali Commission, 550 W 7th Avenue, Suite 1230, Anchorage, AK 99501. Telephone: 907–271–3415. Email: ehetemi@denali.gov.

Authority: Public Law 105–277, sec. 304(b)(1).

Anne Stanislawski,

Administrative Officer.

[FR Doc. 2024–14400 Filed 6–28–24; 8:45 am]

BILLING CODE 3300–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0086]

**Agency Information Collection
Activities; Comment Request;
Expanding Opportunity Through
Quality Charter Schools Program:
Technical Assistance To Support
Monitoring, Evaluation, Data
Collection, and Dissemination of Best
Practices**

AGENCY: Office of Elementary and
Secondary Education (OESE),
Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 30, 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–2024–SCC–0086. 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 www.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 Andrew Brake, (202) 453–6136.

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: Expanding Opportunity through Quality Charter Schools Program: Technical Assistance to Support Monitoring, Evaluation, Data Collection, and Dissemination of Best Practices.

OMB Control Number: 1810–NEW.

Type of Review: New ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 110.

Total Estimated Number of Annual Burden Hours: 172.

Abstract: This request is for a new OMB approval to collect data necessary to support the following: Charter School Programs (CSP) Data Collection, Risk Assessment, and Monitoring. This collection will replace previously approved 1855–0016 collection in order to obtain a new OMB number that is associated with the sub-agency this collection has moved to following a reorganization. The collection of information is still necessary in order to perform data collection, data analysis, risk assessment, and grantee monitoring for the CSP. However, the number of respondents is expected to decrease over the life of this collection, as new grantees (from FY 2022 onward) use the Charter Online Management and Performance System (COMPS) for their reporting (OMB Control Numbers 1810–0781 through 1810–0787). This collection will remain in place for the older grantees that still have active CSP grants.

This data collection is coordinated with the EDFacts Initiative (EDFacts) to reduce respondent burden and fully utilize data submitted by States and available to the U.S. Department of Education (ED) through the EDFacts database. Specifically, under the current data collection, ED collects CSP grant award information from grantees (State agencies, charter management organizations, and some schools) to create a new database of current CSP-funded charter schools and award amounts. Once complete, ED merges performance information extracted from the EDFacts database with the database of CSP-funded charter schools. Together, these data allow ED to monitor CSP grant performance and analyze data related to accountability

for academic performance, financial integrity, and program effectiveness.

Dated: June 25, 2024.

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. 2024–14388 Filed 6–28–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0085]

Agency Information Collection Activities; Comment Request; Federal Student Loan Program Deferment Request Forms

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 a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 30, 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–2024–SCC–0085. 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 www.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) 570–8414.

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: Federal Student Loan Program Deferment Request Forms.

OMB Control Number: 1845–0011.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 704,903.

Total Estimated Number of Annual Burden Hours: 112,819.

Abstract: These forms serve as the means by which borrowers in the William D. Ford Federal Direct Loan (Direct Loan), Federal Family Education Loan (FFEL) and the Federal Perkins Loan (Perkins Loan) Programs may request deferment of repayment on their loans if they meet certain statutory and regulatory criteria. The U.S. Department of Education and other loan holders uses the information collected on these forms to determine whether a borrower meets the eligibility requirements for the specific deferment type being submitted. For greater simplicity and to make it easier to maintain consistency among the various forbearance forms, the Department is consolidating all the current forbearance forms into a single collection under OMB No. 1845–0011. This collection is merging the six currently approved deferment forms in

1845–0011 with the military deferment form currently approved under 1845–0080 and the cancer treatment deferment form currently approved under 1845–0154.

The Department is requesting a revision of the currently approved deferment forms. The proposed changes include the following:

Streamlining the forms by eliminating duplicative and obsolete information; reordering items to present information in a more logical order that is consistent between forms; using “plain language” to present information more clearly and consistently; revising language as necessary to reflect regulatory changes made by the Final Rule published on November 1, 2022 (87 FR 65904) that eliminated the capitalization of unpaid interest following periods of forbearance effective July 1, 2023.

Dated: June 25, 2024.

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. 2024–14387 Filed 6–28–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–48–O]

Application To Amend Export Authorization; El Paso Electric Company

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: El Paso Electric Company (EPE or Applicant) has applied to amend its authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act to reflect a change in counterparty.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 31, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Brett Thompson, (202) 288–2028, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C.

824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) by Delegation Order No. S1–DEL–S3–2023 and Redefinition Order No. S3–DEL–GD1–2023.

On April 16, 1992, DOE issued Order No. EA–48–I authorizing EPE to export electric energy from the United States to Comisión Federal de Electricidad (CFE) in Mexico. Most recently, this export authorization was temporarily amended by Order No. EA–48–N on February 25, 1998. On May 1, 2024, EPE filed an application with DOE (App. or Application) requesting to amend its export authorization to reflect a change in counterparty from CFE to the Centro Nacional de Control de Energía (CENACE). App. at 2.

According to the Application, EPE and CFE entered into an Interchange Agreement (Enabling Contract) to “govern the exchange of power between the two countries.” *Id.* EPE states that “reforms in Mexico have resulted in CFE no longer being responsible for energy transactions with EPE pursuant to the Enabling Contract. Rather, [CENACE] now operates [Mexico's] wholesale electricity market, has operational control of the national electric system, and establishes energy imports and exports for reliability and emergency situations.” *Id.* EPE states that the Enabling Contract was assigned from CFE to CENACE effective April 16, 2024. *Id.* EPE requests that DOE amend its export authorization to reflect CENACE as the counterparty rather than CFE and confirm that the export authorization will remain applicable to the Enabling Contract now that it has been assigned to CENACE. *Id.*

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov.

hq.doe.gov in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning El Paso Electric Company's Application should be clearly marked with GDO Docket No. EA-48-O. Additional copies are to be provided directly to Abe Gonzalez, El Paso Electric, P.O. Box 982, El Paso, Texas 79960, abe.gonzalez@epelectric.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on June 24, 2024, by Maria Robinson, Director, Grid Deployment Office, 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 June 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024-14418 Filed 6-28-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act

requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, July 25, 2024; 6 p.m.–8 p.m. EDT.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Federal Coordinator, by Phone: (740) 897-3737 or Email: greg.simonton@pppo.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Presentation
- Administrative Activities
- Public Comments

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton in advance of the meeting at the telephone number listed above. The EM SSAB, Portsmouth will hear oral public comments during the meeting. Written statements may be filed either before or after the meeting. Written comments received no later than 5 p.m. EDT on Friday, July 19, 2024, will be read aloud during the meeting. Written comments submitted by 5 p.m. EDT on Friday, August 2, 2024, will be included in the minutes. Please submit written comments to Greg Simonton with "Public Comment" in the subject line. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Minutes will be available by writing or calling Greg Simonton, Federal Coordinator, U.S. Department of Energy, Portsmouth/Paducah Project Office, P.O. Box 700, Piketon, OH 45661, Email: greg.simonton@pppo.gov or by Phone: (740) 897-3737, Minutes will also be available at the following website: <https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials>.

Signing Authority: This document of the Department of Energy was signed on June 25, 2024, by David Borak,

Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024-14422 Filed 6-28-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. PP-92-1]

Application To Amend Presidential Permit; El Paso Electric Company

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: El Paso Electric Company (EPE or Applicant) has applied to amend Presidential Permit No. PP-48 to reflect a change in counterparty. Concurrent with this request, the Department of Energy (DOE or Department) intends to amend the permit to incorporate reference to the North American Electric Reliability Corporation and Western Systems Coordinating Council, as applicable, pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 31, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Brett Thompson, (202) 288-2028, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (E.O.) 10485, as amended by E.O. 12038. On April 10,

2023, the authority to issue such permits was delegated to the DOE's Grid Deployment Office by Delegation Order No. S1-DEL-S3-2023 and Redelegation Order No. S3-DEL-GD1-2023.

On April 16, 1992, DOE issued Presidential Permit No. PP-92, authorizing EPE to construct, connect, operate, and maintain a 115-kilovolt (kV) transmission line at the international border between the United States and Mexico.

On May 1, 2024, EPE filed an application with DOE (Application or App.) requesting to amend Presidential Permit No. PP-48 to reflect a change in the counterparty from Comisión Federal de Electricidad (CFE) to the Centro Nacional de Control de Energía (CENACE). App. at 2.

According to the Application, EPE and CFE entered into an Interchange Agreement (Enabling Contract) to "govern the exchange of power between the two countries." *Id.* EPE states that "reforms in Mexico have resulted in CFE no longer being responsible for energy transactions with EPE pursuant to the Enabling Contract. Rather, [CENACE] now operates [Mexico's] the wholesale electricity market, has operational control of the national electric system, and establishes energy imports and exports for reliability and emergency situations." *Id.* EPE states that the Enabling Contract was assigned from CFE to CENACE effective April 16, 2024. *Id.* EPE requests that DOE amend Presidential Permit No. PP-92 to reflect CENACE as the counterparty rather than CFE and confirm that the permit will remain applicable to the Enabling Contract now that it has been assigned to CENACE. *Id.*

Additionally, Article 4 of Presidential Permit No. PP-92 also provides that "[t]he facilities . . . will be designed and operated in accordance with the applicable criteria established by the Inland Power Pool, and consistent with the Western Systems Coordinating Council." PP-92 at 5. Issuance of the permit preceded the enactment of the Energy Policy Act of 2005, which added section 215 to the Federal Power Act and allowed the Federal Energy Regulatory Commission to certify an Electric Reliability Organization to develop enforceable reliability standards for the Nation's bulk-power system. The certified organization, the North American Electric Reliability Corporation (NERC), oversees several Regional Entities, one of which is the Western Electricity Coordinating Council (WECC). Therefore, concurrent with its intent to modify Presidential Permit No. PP-92 to reflect the substitution of CENACE for CFE, the

Department intends to revise Article 4 to substitute the full names of NERC and WECC, as applicable.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning El Paso Electric Company's Application should be clearly marked with GDO Docket No. PP-92-1. Additional copies are to be provided directly to Abe Gonzalez, El Paso Electric, P.O. Box 982, El Paso, Texas 79960, abe.gonzalez@epelectric.com.

Before a Presidential permit may be issued, DOE must determine whether the proposed action is in the public interest. In making that determination, DOE will consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021); determine the Applicant's proposed project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions; and weigh any other factors that DOE may also consider relevant to the public interest. DOE also must obtain the favorable recommendation of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

EPE's Application may be reviewed or downloaded electronically at www.energy.gov/gdo/pending-applications-0 or by emailing Electricity.Exports@hq.doe.gov. Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on June 24, 2024, by Maria Robinson, Director, Grid Deployment Office, 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 June 26, 2024.

Treena V. Garrett,

*Federal Register Liaison Officer, U.S.
Department of Energy.*

[FR Doc. 2024-14420 Filed 6-28-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. PP-48-4]

Application To Amend Presidential Permit; El Paso Electric Company

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: El Paso Electric Company (EPE or Applicant) has applied to amend Presidential Permit No. PP-48 to reflect a change in counterparty. Concurrent with this request, the Department of Energy (DOE or Department) intends to amend the permit to incorporate reference to the North American Electric Reliability Corporation and Western Systems Coordinating Council, as applicable, pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before July 31, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Brett Thompson, (202) 288-2028, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued by the Secretary of Energy pursuant to Executive Order (E.O.) 10485, as amended by E.O. 12038. On April 10, 2023, the authority to issue such permits was delegated to the DOE's Grid Deployment Office by Delegation Order

No. S1–DEL–S3–2023 and Redelelegation Order No. S3–DEL–GD1–2023.

On May 21, 1946, Presidential Permit No. PP–48 (formally, FPC Docket IT–5762) was granted to EPE authorizing construction, operation, maintenance, and connection, of a 69-kilovolt (kV) transmission line at the international border between the U.S. and Mexico. Presidential Permit No. PP–48 was amended on March 15, 1949 (Docket No. PP–48–1), November 26, 1958 (Docket No. PP–48–2), and December 13, 1990 (Docket No. PP–48–3). On May 1, 2024, EPE filed an application with DOE (Application or App.) requesting to amend Presidential Permit No. PP–48 to reflect a change in counterparty from Comisión Federal de Electricidad (CFE) to the Centro Nacional de Control de Energía (CENACE). App. at 2.

According to the Application, EPE and CFE entered into an Interchange Agreement (Enabling Contract) to “govern the exchange of power between the two countries.” *Id.* EPE states that “reforms in Mexico have resulted in CFE no longer being responsible for energy transactions with EPE pursuant to the Enabling Contract. Rather, [CENACE] now operates [Mexico’s] the wholesale electricity market, has operational control of the national electric system, and establishes energy imports and exports for reliability and emergency situations.” *Id.* EPE states that the Enabling Contract was assigned from CFE to CENACE effective April 16, 2024. *Id.* EPE requests that DOE amend Presidential Permit No. PP–48 to reflect CENACE as the counterparty rather than CFE and confirm that the permit will remain applicable to the Enabling Contract now that it has been assigned to CENACE. *Id.*

Additionally, Article 3 of Presidential Permit No. PP–48–3 also provides that “[t]he facilities . . . will be designed and operated in accordance with the applicable criteria established by the Inland Power Pool, and consistent with the Western Systems Coordinating Council.” PP–48–3 at 6. Issuance of the permit preceded the enactment of the Energy Policy Act of 2005, which added section 215 to the Federal Power Act and allowed the Federal Energy Regulatory Commission to certify an Electric Reliability Organization to develop enforceable reliability standards for the Nation’s bulk-power system. The certified organization, the North American Electric Reliability Corporation (NERC), oversees several Regional Entities, one of which is the Western Electricity Coordinating Council (WECC). Therefore, concurrent with reviewing EPE’s request to modify Presidential Permit No. PP–48 to reflect

the substitution of CENACE for CFE, the Department intends to revise Article 3 to substitute the full names of NERC and WECC, as applicable.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission’s (FERC’s) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning El Paso Electric Company’s Application should be clearly marked with GDO Docket No. PP–48–4.

Additional copies are to be provided directly to Abe Gonzalez, El Paso Electric, P.O. Box 982, El Paso, Texas 79960, abe.gonzalez@epelectric.com.

Before a Presidential permit may be issued, DOE must determine whether the proposed action is in the public interest. In making that determination, DOE will consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to DOE’s National Environmental Policy Act Implementing Procedures (10 CFR part 1021); determine the Applicant’s proposed project’s impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions; and weigh any other factors that DOE may also consider relevant to the public interest. DOE also must obtain the favorable recommendation of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

EPE’s Application may be reviewed or downloaded electronically at www.energy.gov/gdo/pending-applications-0 or by emailing Electricity.Exports@hq.doe.gov. Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on June 24, 2024, by Maria Robinson, Director, Grid Deployment Office, 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 June 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–14419 Filed 6–28–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–91–000.

Applicants: Tenaska Virginia Partners, L.P.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Tenaska Virginia Partners, L.P.

Filed Date: 6/21/24.

Accession Number: 20240621–5215.

Comment Date: 5 p.m. ET 7/12/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–210–000.

Applicants: Millers Branch Solar, LLC.

Description: Millers Branch Solar, LLC submits notice of self-certification of exempt wholesale generator status.

Filed Date: 6/24/24.

Accession Number: 20240624–5093.

Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: EG24–211–000.

Applicants: FRP Tupelo Solar, LLC. *Description:* FRP Tupelo Solar, LLC submits notice of self-certification of exempt wholesale generator status.

Filed Date: 6/24/24.

Accession Number: 20240624–5160.

Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: EG24–212–000.

Applicants: Harmony Florida Solar II, LLC.

Description: Harmony Florida Solar II, LLC submits notice of self-certification of exempt wholesale generator status.

Filed Date: 6/24/24.

Accession Number: 20240624–5161.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: EG24–213–000.
Applicants: Storey Bend Solar, LLC.
Description: Storey Bend Solar, LLC submits notice of self-certification of exempt wholesale generator status.

Filed Date: 6/24/24.

Accession Number: 20240624–5166.
Comment Date: 5 p.m. ET 7/15/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–119–000.

Applicants: PJM Interconnection, L.L.C.

Description: ISO/RTO 206 Filing: Revisions to Operating Agreement Facilitating PJM Independent 205 Filing Rights to be effective 12/31/9998.

Filed Date: 6/21/24.

Accession Number: 20240621–5078.
Comment Date: 5 p.m. ET 7/12/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1905–017.

Applicants: AZ721 LLC.

Description: Notice of Change in Status of Amazon Energy LLC.

Filed Date: 6/21/24.

Accession Number: 20240621–5214.
Comment Date: 5 p.m. ET 7/12/24.

Docket Numbers: ER23–2625–001; ER11–1846–013; ER11–1847–013; ER11–1850–013; ER11–2062–030; ER11–2175–008; ER11–2176–007; ER11–2598–016; ER11–3188–008; ER11–3418–010; ER11–4307–031; ER11–4308–031; ER12–224–009; ER12–225–009; ER12–261–030; ER12–2301–008; ER17–764–008; ER17–765–008; ER17–767–008; ER18–1160–004; ER21–2826–003.

Applicants: NRG Curtailment Solutions, Inc., NRG Cottonwood Tenant LLC, Stream Energy Delaware, LLC, Stream Energy Illinois, LLC, Stream Ohio Gas & Electric, LLC, Stream Energy New York, LLC, Independence Energy Group LLC, Stream Energy New Jersey, LLC, Stream Energy Columbia, LLC, Reliant Energy Northeast LLC, Green Mountain Energy Company, XOOM Energy, LLC, Stream Energy Maryland, LLC, Gateway Energy Services Corporation, Stream Energy Pennsylvania, LLC, SGE Energy Sourcing, LLC, Energy Plus Holdings LLC, Direct Energy Business, LLC, Direct Energy Marketing Inc., Direct Energy Services, LLC, NRG Business Marketing LLC.

Description: Triennial market power analysis for Northeast Region of NRG Business Marketing LLC.

Filed Date: 6/20/24.

Accession Number: 20240620–5360.
Comment Date: 5 p.m. ET 8/19/24.

Docket Numbers: ER24–729–001.

Applicants: Holyoke BESS LLC.

Description: Refund Report: Refund Report in Docket ER24–729 to be effective N/A.

Filed Date: 6/24/24.

Accession Number: 20240624–5181.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–738–001.

Applicants: PNY BESS LLC.

Description: Refund Report: Refund Report in Docket ER24–738 to be effective N/A.

Filed Date: 6/24/24.

Accession Number: 20240624–5175.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–1610–001.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Response to May 24, 2024 Deficiency Letter to be effective 8/20/2024.

Filed Date: 6/21/24.

Accession Number: 20240621–5200.
Comment Date: 5 p.m. ET 7/12/24.

Docket Numbers: ER24–1982–001.

Applicants: Wellesley BESS LLC.

Description: Tariff Amendment: Amended Application for Market Based Rate Authorization to be effective 7/1/2024.

Filed Date: 6/21/24.

Accession Number: 20240621–5172.
Comment Date: 5 p.m. ET 7/1/24.

Docket Numbers: ER24–2344–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amendment to ISA, SA No. 5682; Queue Nos. AF1–190/AF1–191 (amend) to be effective 8/21/2024.

Filed Date: 6/21/24.

Accession Number: 20240621–5173.
Comment Date: 5 p.m. ET 7/12/24.

Docket Numbers: ER24–2345–000.

Applicants: SEPV Cuyama, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 6/25/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5052.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2346–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 1892R13 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5071.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2347–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 1977R20 Nemaha-Marshall Electric Cooperative NITSA and NOA to be effective 9/1/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5079.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2348–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 1978R13 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5086.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2349–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 1893R14 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5092.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2350–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 1894R13 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5099.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2351–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 1895R14 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5112.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2352–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 1897R14 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5118.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2353–000.

Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii): AEP submits amended ILDSA, SA No. 1252 to be effective 9/1/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5151.
Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2354–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Ministerial Clean-Up OATT, Att. K-Appendix and OA, Schedule 1, Sections 3.2 to be effective 4/1/2015.

Filed Date: 6/24/24.

Accession Number: 20240624–5172.

Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: ER24–2355–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amended ISA, Service Agreement No. 6578; AD1–088 to be effective 8/26/2024.

Filed Date: 6/24/24.

Accession Number: 20240624–5180.

Comment Date: 5 p.m. ET 7/15/24.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC24–3–000.

Applicants: Enbridge Inc.

Description: Enbridge Inc. submits Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 6/20/24.

Accession Number: 20240620–5021.

Comment Date: 5 p.m. ET 7/11/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: June 24, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–14395 Filed 6–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9885–220]

Marysville Hydro Partners; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 9885–220.

c. *Date Filed:* April 30, 2024.

d. *Submitted By:* Marysville Hydro Partners.

e. *Name of Project:* Falls River Hydroelectric Project.

f. *Location:* On the Fall River, in Fremont County, Idaho. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Doug Dockter, 205 N 10th St., Ste. 510, Boise, Idaho 83702; (208) 388–2987; email—DDockter@ida-west.com.

i. *FERC Contact:* Maryam Zavareh at (202) 502–8474; or email at maryam.zavareh@ferc.gov.

j. Marysville Hydro Partners filed its request to use the Traditional Licensing Process on April, 30 2024. Marysville Hydro Partners provided public notice of its request on July 6, 2000. In a letter dated June 24, 2024, the Acting Director of the Division of Hydropower Licensing approved Marysville Hydro Partners' request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Idaho State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the Marysville Hydro Partners as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Marysville Hydro Partners filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208–3676 or TTY (202) 502–8659.

You may register online at <https://ferconline.ferc.gov/FERConline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 9885–220. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2027.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: June 24, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–14397 Filed 6–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Staff Attendance at North American Electric Reliability Corporation Industry Webinar**

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation: Industry Webinar: Project 2020–02 Modifications to PRC–024

June 28, 2024 | 11:00 a.m.–12:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: <https://www.nerc.com/pa/Stand/Lists/stand/DispForm.aspx?ID=2380>.

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RR24–2–000—North American Electric Reliability Corporation

For further information, please contact Leigh Anne Faugust at (202) 502–6396 or leigh.faugust@ferc.gov.

Dated: June 24, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–14393 Filed 6–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP24–13–000]

MountainWest Overthrust Pipeline, LLC; Notice of Availability of the Environmental Assessment for the Proposed Westbound Compression Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Westbound Compression Expansion Project, proposed by MountainWest Overthrust Pipeline, LLC (Overthrust) in the above-referenced docket. Overthrust requests authorization to provide an additional 325,000 dekatherms per day (Dth/d) of year-round firm transportation service on Overthrust's mainline (ML) at existing Point of Rocks and Rock Springs Compressor Stations,

as well as related facility upgrades and modifications in Sweetwater, Uinta, and Lincoln Counties, Wyoming.

The EA assesses the potential environmental effects of the construction and operation of the Westbound Compression Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The U.S. Bureau of Land Management (BLM) participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The BLM will adopt and use the EA to along with other supporting documentation to consider the issuance of amended Mineral Leasing Act right-of-way grants for the portion of the proposed project on Federal lands.

The proposed Westbound Compression Expansion Project includes the following facilities and activities, all in Wyoming:

- addition of one gas-fired turbine driven compressor unit with 15,900 nominal horsepower (hp) at the existing Point of Rocks Compressor Station in Sweetwater County;
- addition of one gas-fired turbine driven compressor unit with 15,900 nominal hp at the existing Rock Springs Compressor Station in Sweetwater County;
- an approximate 1,400-foot-long, 24-inch-diameter pipe interconnect (JTL–148) extending from a new tap on Overthrust's mainline 122 at its existing North Rendezvous Tap facility to a new meter station being constructed by Kern River Gas Transmission at an existing site in Lincoln County;
- upgrades to the existing Rockies Express Pipeline Wamsutter Meter Station to accommodate additional gas volumes in Sweetwater County;
- upgrades at three existing facilities—Roberson Compressor Station (new pig launcher and receiver ¹ in Lincoln County), Cabin 31 Interconnect Pipeline Facility (new pig launcher in Sweetwater County), and Opal Interconnect Pipeline Facility (new pig launcher in Lincoln County), to support

¹ A “pig” is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

in-line inspections along the Overthrust mainline; and

- modifications to Overthrust's existing Granger Interconnect Facility to accommodate new flow conditions in Sweetwater County.

The Commission mailed a copy of the *Notice of Availability* of the EA to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environmental-documents>). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select “General Search” and enter the docket number in the “Docket Number” field, excluding the last three digits (*i.e.* CP24–13). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on July 24, 2024.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP24-13-000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at <https://www.ferc.gov/how-intervene>.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: June 24, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14389 Filed 6-28-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24-837-000.
Applicants: High Island Offshore System, L.L.C.

Description: 4(d) Rate Filing: Minor Housekeeping—Update Contacts' Information to be effective 7/24/2024.

Filed Date: 6/24/24.
Accession Number: 20240624-5048.
Comment Date: 5 p.m. ET 7/8/24.

Docket Numbers: RP24-838-000.
Applicants: Iroquois Gas Transmission System, L.P.

Description: 4(d) Rate Filing: 6.24.24 Negotiated Rates—Emera Energy Services, Inc. R-2715-86 to be effective 7/1/2024.

Filed Date: 6/24/24.
Accession Number: 20240624-5059.
Comment Date: 5 p.m. ET 7/8/24.

Docket Numbers: RP24-839-000.
Applicants: Iroquois Gas Transmission System, L.P.

Description: 4(d) Rate Filing: 6.24.24 Negotiated Rates—Emera Energy Services, Inc. R-2715-87 to be effective 7/1/2024.

Filed Date: 6/24/24.
Accession Number: 20240624-5061.

Comment Date: 5 p.m. ET 7/8/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

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Dated: June 24, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-14394 Filed 6-28-24; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0075; FRL-11521-01-OCSPP]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in table 1 of unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an August 31, 2023, **Federal Register** Notice of Receipt

of Requests from the registrants listed in table 2 of unit II, to voluntarily cancel these product registrations. In the August 31, 2023, notice EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. EPA received one anonymous comment on this notice that was supportive of EPA cancelling these registrations, which EPA acknowledges. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions. This notice also announces that EPA has previously approved the requests for voluntary cancellation of several registrations included in the August 31, 2023, notice listed in table 3 of unit II. EPA sent a separate letter approving these requests for voluntary cancellation to Syngenta Crop Protection, LLC on October 3, 2023. The disposition of existing stocks

for these products is governed by the provisions in EPA's October 3, 2023, letter approving the voluntary cancellation of these products rather than unit VI.

DATES: The cancellations are effective July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-2707; email address: green.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2023-0075, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (202) 566-1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

II. What action is the Agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
100–1305	100	Cruiser Maxx Cereals	Difenoconazole (128847/119446–68–3)—(3.36%), Metalaxyl-M (113502/70630–17–0)—(56%), Thiamethoxam (060109/153719–23–4)—(2.8%).
264–998	264	Four Way Peanut Seed Treatment Fungicide.	Captan (081301/133–06–2)—(49%), Metalaxyl (113501/57837–19–1)—(8%), Thiophanate-methyl (102001/23564–05–8)—(13.6%), Trifloxystrobin (129112/141517–21–7)—(2%).
56228–33	56228	Mesurool 75% Wettable Powder Aversive Conditioning Egg Treatment.	Methiocarb (100501/2032–65–7)—(75%).
AR–130004	69969	Avipel (Dry) Corn Seed Treatment.	Antraquinone (122701/84–65–1)—(50%).
OR–160005	61842	Linex 4L Herbicide	Linuron (035506/330–55–2)—(40.6%).
TN–090006	264	Gauche XT Flowable	Imidacloprid (129099/138261–41–3)—(12.7%), Metalaxyl (113501/57837–19–1)—(82%), Tebuconazole (128997/107534–96–3)—(62%).
WA–030035	62719	Stinger	Clpyralid, monoethanolamine salt (117401/57754–85–5)—(40.9%).
WA–120008	62719	Entrust SC	Spinosad (110003/131929–60–7)—(22.5%).
WA–970033	62719	Stinger	Clpyralid, monoethanolamine salt (117401/57754–85–5)—(40.9%).

Table 2 of this unit includes the names and addresses of record for all registrants of the products in table 1 &

table 3 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA

registration numbers of the products listed in table 1 and table 3 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
264	Bayer CropScience, LP, Agent Name: Bayer CropScience, LLC, 801 Pennsylvania Avenue, Suite 900, Washington, DC 20004.
56228	U.S. Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 149, Riverdale, MD 20737.
61842	Tessenderlo Kerley, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street, Ct. NW, Gig Harbor, WA 98332.
62719	Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268.
69969	Arkion Life Sciences, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.

This notice also announces that EPA has cancelled, as requested by the registrant, the FIFRA section 3 registrations of the products listed in

table 3 of this unit by a separate letter to Syngenta Crop Protection, LLC. This letter was issued by the Agency on October 3, 2023, and is available for

each of the cancelled products below on the Pesticide Product and Label System (PPLS) at <https://ordspub.epa.gov/ords/pesticides/f?p=PPLS:1>.

TABLE 3—PRIOR PRODUCT CANCELLATION OF PRODUCTS CONTAINING CYANTRANILIPROLE

Registration No.	Company No.	Product name	Active ingredients
100-1422	100	A16901B Ornamental Insecticide	Cyantraniliprole (090098/736994-63-1)—(20%), Thiamethoxam (060109/153719-23-4)—(20%).
100-1544	100	HGW86 T&O Insect Control	Cyantraniliprole (090098/736994-63-1)—(18.66%).
100-1552	100	Mainspring	Cyantraniliprole (090098/736994-63-1)—(18.66%).
100-1574	100	Mainspring Flora GH	Cyantraniliprole (090098/736994-63-1)—(10%), Pymetrozine (101103/123312-89-0)—(30%).

III. Summary of Public Comments Received and Agency Response to Comments

EPA received one anonymous comment on this notice that was supportive of EPA cancelling these registrations, which EPA acknowledges. For these reasons, the Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in table 1 of unit II. Accordingly, the Agency hereby orders that the product registrations identified in table 1 of unit II, are canceled. The effective date of the cancellations that are the subject of this notice is July 1, 2024. Any distribution, sale, or use of existing stocks of the products identified in table 1 of unit II, in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in unit VI, will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of August 31, 2023 (88 FR 60207) (FRL-11150-01-OCSP). The comment period closed on October 02, 2023.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in table 1 of unit II, until July 1, 2025, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in table 1, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in table 1 of unit II, until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

The disposition of existing stocks for the products listed in table 3 of unit II, is governed by the provisions in EPA's October 3, 2023, letter approving the voluntary cancellation of these products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 11, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2024-14354 Filed 6-28-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2024-0061; FRL-11680-05-OCSP]

Pesticide Product Registration; Receipt of Applications for New Uses (May 2024)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before July 31, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2024-0061, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Dan Rosenblatt, Registration Division (RD) (7505T), main telephone number: (202) 566-2875, email address: RDNotices@epa.gov. The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *PP 3E9060. Docket ID number:* EPA-HQ-OPP-2024-0176. USDA Foreign Agriculture Service, 1400 Independence Ave, Washington, DC 20250, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, fluopyram (N-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl] ethyl]-2-

(trifluoromethyl) benzamide), in or on mango at 1 part per million (ppm). High performance liquid chromatography-electrospray ionization/tandem mass spectrometry (LC-MS/MS) is used to measure and evaluate the chemical fluopyram. *Contact:* RD.

2. *File Symbols:* 35935-REI, 71368-RUE, 71368-RUR. *EPA Registration Numbers:* 228-742, 15440-24, 15440-35, 71368-130. *Docket ID number:* EPA-HQ-OPP-2022-0594. *Applicant:* Nufarm Limited, C/O Nufarm Americas Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560. *Active ingredient:* Dichlorprop-P. *Product type:* Herbicide. *Proposed uses:* Barley subgroup 15-22B; fallow (alfalfa termination and cotton termination); fallow land and crop stubble; field corn subgroup 15-22C; grain sorghum and millet subgroup 15-22E; soybean; sweet corn subgroup 15-22D; wheat subgroup 15-22A. *Contact:* RD.

3. *EPA Registration Numbers:* 63588-91 and 63588-92. *Docket ID number:* EPA-HQ-OPP-2024-0212. *Applicant:* K-I Chemical U.S.A., Inc. c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603-5126. *Active ingredient:* Pyroxasulfone. *Product type:* Herbicide. *Proposed use:* Crop group 14-12 (tree nuts); crop subgroup 13-07F (Small fruit vine climbing subgroup, except fuzzy kiwifruit). *Contact:* RD.

4. *File symbol:* 7969-LNL. *EPA Registration Number:* 7969-261. *Docket ID number:* EPA-HQ-OPP-2023-0537. *Applicant:* BASF Corporation, 26 Davis Drive, Research Triangle Park, North Carolina 27709. *Active ingredient:* Topramezone. *Product type:* Herbicide. *Proposed use:* Topramezone-resistant cotton. *Contact:* RD.

5. *EPA Registration Number:* 7969-197. *Docket ID number:* EPA-HQ-OPP-2024-0187. *Applicant:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709. *Active ingredient:* Boscalid. *Product type:* Fungicide. *Proposed use:* Field corn; popcorn; sweet corn; seed production corn. *Contact:* RD.

6. *EPA Registration Number:* 7969-198. *Docket ID number:* EPA-HQ-OPP-2024-0187. *Applicant:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709. *Active ingredient:* Boscalid. *Product type:* Fungicide. *Proposed use:* Corn. *Contact:* RD.

7. *EPA Registration Numbers:* 7969-390 and 7969-393. *Docket ID number:* EPA-HQ-OPP-2024-0200. *Applicant:* BASF Corporation 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709-3528. *Active ingredient:* Afidopyropen. *Product type:* Insecticide.

Proposed uses: New greenhouse uses on leaf lettuce. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: June 14, 2024.

Kimberly Smith,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2024-14435 Filed 6-28-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0876; FR ID 228505]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 31, 2024.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Nicole Ongele,

FCC, via email to PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060-0876.

Title: Sections 54.703, USAC Board of Directors Nomination Process and Sections 54.719 through 54.725, Review of the Administrator's Decision.

Form Number(s): N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and Not-for-profit institutions, and State, Local or Tribal Governments.

Number of Respondents and Responses: 1,413 respondents; 1,413 responses.

Estimated Time per Response: 20 hours.

Frequency of Response: Once every 3 year reporting requirement and on occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151-154, 201-205, 218-220, 254, 303(r), 403 and 405.

Total Annual Burden: 28,126 hours.

Total Annual Cost: No cost.

Needs and Uses: The information in this collection is used by the Commission to select Universal Service Administrative Company (USAC) Board of Directors and to ensure that requests for review are filed properly with the Commission.

Section 54.703 states that industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors.

Sections 54.719 through 54.725 describes the procedures for Commission review of USAC decisions including the general filing requirements pursuant to which parties may file requests for review.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024-14476 Filed 6-28-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0678; FR ID 228594]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning:

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 30, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0678.

Title: Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations.

FCC Form Number: FCC Form 312 (Main Form and Schedules A, B, and S), FCC Form 312-R.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities, not-for-profit institutions.

Number of Respondents and Responses: 3,535 respondents and 3,587 responses.

Estimated Time per Response: 0.5-80 hours.

Frequency of Response: On occasion, one time and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection

is contained in 47 U.S.C. 151, 154(i), 157, 301, 303, 307, 308, 309, and 310.
Total Annual Burden: 27,620 hours.
Total Annual Cost: \$4,154,267.

Needs and Uses: The Commission requests that the Office of Management and Budget (OMB) approve a revision of the information collection titled “Part 25 of the Federal Communications Commission’s Rules Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations” under OMB Control No. 3060–0678 as a result of a Report and Order (89 FR 34148) adopting a framework to offer supplemental coverage from space (SCS). SCS is a crucial component of the Commission’s vision for a “single network future,” in which satellite and terrestrial networks work seamlessly together to provide coverage that neither network can achieve on its own, and will enable consumers in areas not covered by terrestrial networks to be connected using their existing devices via satellite-based communications. In order to ensure that prospective SCS operators will be able to comply with the applicable rules, that the public interest will be served by granting their applications, and that harmful interference will be avoided to the greatest extent possible thereafter, the Commission seeks approval to collect the following information to confirm that satellite service operators who seek to enter lease agreements with terrestrial service providers to offer supplemental coverage from space (SCS) do so in compliance with the rules that govern SCS operations.

Specifically, the Commission adopted requirements in its part 25 rules that parties who seek to provide SCS must submit a new or modified FCC Form 312 with the following certifications: that they have submitted a lease notification; that the space station licensee or grantee of market access will provide SCS in the geographic area covered by the licenses held by its terrestrial partner(s); and that SCS earth stations will qualify as licensed by rule stations under the Commission’s part 25 rules. An applicants must also describe its SCS proposal in detail in its FCC Form 312 (Main Form and Schedule S), with a brief description of the coverage areas that will be served, domestically and internationally, and include a list of the file and identification numbers associated with the relevant leasing notification(s) under the Commission’s part 1 rules.

This revised information collection is designed to allow Commission staff to carry out its statutory duties to regulate satellite communications in the public interest; namely, to ensure that

prospective providers of SCS will operate in compliance with the applicable regulatory framework. The Commission will use this information to assess applicants’ qualifications, and to conclude whether, and under what conditions, grant of an authorization to provide SCS will serve the public interest. This collection will thereby enable the Commission to monitor and enforce the entry criteria that SCS providers must satisfy, and which are designed to minimize the possibility of harmful interference.

Finally, the collection will play a critical role in the Commission’s effort to review and track leasing arrangements that will result in entities providing SCS.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–14480 Filed 6–28–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0228; FR ID 228577]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 31, 2024.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be

considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific

comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control No.: 3060–0228.

Title: Section 80.59, Compulsory Ship Inspections and Ship Inspection Certificates, FCC Forms 806, 824, 827, and 829.

Form No.: FCC Forms 806, 824, 827, and 829.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and State, local, or tribal government.

Number of Respondents and Responses: 10,150 respondents and 15,175 responses.

Estimated Time per Response: The actual inspection will take approximately 4 hours to complete. An FCC ship safety certificate will take approximately 0.083 hours (5 minutes) to complete. Providing an entry in the ship’s log will take an inspector and ship operator/owner approximately 0.25 hours (15 minutes) each to complete. These estimates are based on FCC staff’s knowledge and familiarity with the availability of the data required. Approximately 100 requests for a waiver of the required annual inspection are received each year from the licensees of large oceangoing vessels returning from a foreign port; it is estimated that an engineer or communications specialists would spend two hours preparing such a waiver request. Therefore, the range for completing the information collection requirements is 0.083 hours–4 hours.

Frequency of Response: On occasion, annual, and every five-year reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required for regulatory or compliance. The statutory authority for this collection 47 U.S.C. 154, 303, 307(e), 309 and 332, unless noted.

Total Annual Burden: 23,229 hours.

Annual Cost Burden: No cost.

Needs and Uses: The requirements contained in § 80.59 are necessary to implement the provisions of section 362(b) of the Communications Act of 1934, as amended, which require the Commission to inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the Communications Act.

Additionally, section 385 of the Communications Act requires the inspection of small passenger ships at least once every five years, and Subpart

T of Part 80 of the Commission’s rules requires the inspection of certain vessels operating in the Great Lakes at least once every 48 months.

The Safety Convention—an international treaty (to which the United States (U.S.) is a signatory)—also requires an annual inspection. The Safety Convention permits an Administrator to entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it. Therefore, the U.S. can have other parties conduct the radio inspection of vessels for compliance with the Safety Convention.

The Commission allows FCC-licensed technicians to conduct these inspections. FCC-licensed technicians not only certify that the ship passed an inspection, but also issue a safety certificate. These safety certificates (FCC Forms 806, 824, 827, and 829) indicate that the vessel complies with the Communications Act, the Commission’s rules, and the Safety Convention. These technicians are required to provide a summary of the results of the inspection in the ship’s log. In addition, the vessel’s owner, operator, or ship’s master must certify in the ship’s log that the inspection was satisfactory. Inspection certificates issued in accordance with the Safety Convention must be posted in a prominent and accessible place on the ship.

Further, § 80.59(d) states that the Commission may, upon a finding that the public interest would be served, grant a waiver of the annual inspection required by section 362(b) of the Communications Act, for a period of not more than 90 days for the sole purpose of enabling a U.S. vessel to complete its voyage and proceed to a port in the U.S. when an inspection can be held. An information application must be submitted by a ship’s owner, operator, or authorized agent. The application must be electronically submitted to the FCC Headquarters (via email to Ghassan.Khalek@fcc.gov, Katie.Knox@fcc.gov, Kathleen.Curameng@fcc.gov, and Thomas.Derenge@fcc.gov) at least three days before the ship’s arrival. The application must provide specific information that is contained in § 80.59. The forms to be completed are FCC Forms 806, 824, 827, and 829.

The Commission seeks revision of this OMB control number due to recent amendments to the Safety Convention by way of Resolution Marine Safety Committee (MSC) 496(105) that was adopted on April 28, 2022; as a result of SOLAS revisions of its Passenger Ship Safety Certificate and Cargo Ship Radio certificates, FCC Forms 806 and 829 are being revised accordingly.

Regarding the remaining forms associated with this OMB control number, FCC Forms 824 and 827 will undergo technical amendments for non-substantive edits.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–14479 Filed 6–28–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. FMC–2024–0005]

Controlled Carriers Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is publishing an updated list of controlled carriers, *i.e.*, ocean common carriers operating in U.S.-foreign trades that are, or whose operating assets are, directly or indirectly owned or controlled by foreign governments. Such carriers are subject to increased regulatory oversight by the Commission.

FOR FURTHER INFORMATION CONTACT:

David Eng, Secretary; Phone: (202) 523–5725; Email: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is updating the list of controlled carriers to add an entity that qualifies as a controlled carrier. The Shipping Act of 1984, as amended (Shipping Act), defines a “controlled carrier” as an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. 46 U.S.C. 40102(9). Ownership or control by a government is deemed to exist for a carrier if (1) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government, or (2) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier. *Id.*; 46 CFR 565.2(a).

As required by the Shipping Act, controlled carriers are subject to enhanced oversight by the Commission. For example, 46 U.S.C. 40701(b) provides that the Commission may, after providing notice and opportunity for a hearing, prohibit the publication or use of a rate, charge, classification, rule, or regulation that a controlled carrier has

failed to demonstrate is just and reasonable. *See* 46 U.S.C. 40701(b). In addition, 46 U.S.C. 40502(f) provides that in an action for a breach of a service contract, the dispute resolution forum cannot in any way be controlled by or affiliated with a controlled carrier or by the government that owns or controls the carrier. *See* 46 U.S.C. 40502(f). Congress enacted these protections to ensure that controlled carriers, whose marketplace decision making can be influenced by foreign governmental priorities or by their access to non-market sources of capital, do not engage in unreasonable below-market pricing practices which could disrupt trade or harm privately-owned shipping companies.

The controlled carrier list is not a comprehensive list of foreign-owned or controlled ships or ship owners; rather, it is only a list of ocean common carriers that are controlled by governments. *See* 46 U.S.C. 40102(9). Thus, tramp operators and other non-common carriers are not included, nor are non-vessel-operating common carriers, regardless of their ownership or control.

The controlled carrier list was last updated on February 27, 2024. *See* 89 FR 14495. This notice revises the list to add HMM as a controlled carrier of the government of the Republic of Korea. It is also noted that the United States and the Republic of Korea signed a Treaty of Friendship, Commerce and Navigation that entered into force on November 7, 1957. As such, HMM is entitled to the exception at 46 U.S.C. 40706(1), which exempts it from the requirements of Title 46, Chapter 407, but not from the provisions of 46 U.S.C. 40502(f) and 46 U.S.C. 46106(b)(7).

There are no changes to report with respect to the remaining controlled carriers on the list.

It is requested that any other information regarding possible omissions or inaccuracies in this list be provided to the Commission's Office of the General Counsel at generalcounsel@fmc.gov. *See* 46 CFR 501.12.

The amended list of currently classified controlled carriers and their corresponding Commission-issued Registered Persons Index numbers is set forth below:

(1) COSCO SHIPPING Lines Co., Ltd. (RPI No. 015614)—People's Republic of China;

(2) Orient Overseas Container Line Limited (RPI No. 011398)—People's Republic of China;

(3) OOCL (Europe) Limited (RPI No. 024786)—People's Republic of China;

(4) Hede (HONGKONG) International Shipping Limited (RPI No. 033332)—People's Republic of China;

(5) HMM (RPI No. 001452)—Republic of Korea.

By the Commission.

David Eng,

Secretary.

[FR Doc. 2024–14447 Filed 6–28–24; 8:45 am]

BILLING CODE 6730–02–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 Reporting Requirements Associated with Emergency Lending Under Section 13(3) (FR A; OMB No. 7100–0373).

DATES: The revisions are effective July 31, 2024.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghribi@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 (which contain more detailed information about the information collections and burden estimates than this notice), 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/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On

the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR A.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Reporting Requirements Associated with Emergency Lending Under Section 13(3).

Collection identifier: FR A.

OMB control number: 7100–0373.

General description of collection: Section 13(3) of the Federal Reserve Act provides that the Board may authorize any Federal Reserve Bank to extend credit to an individual, partnership, or corporation, subject to conditions. The Board's Regulation A establishes policies and procedures with respect to emergency lending under section 13(3). The FR A is the Board's information collection associated with Regulation A. The FR A consists of reporting requirements for entities' compliance with the terms and conditions of the emergency lending facilities.

Frequency: Event-generated.

Respondents: Persons or entities borrowing under an emergency lending program or facility established pursuant to section 13(3).

Total estimated number of respondents: 10.

Total estimated change in burden: (257,250).

Total estimated annual burden hours: 55.

Current actions: On March 7, 2024, the Board published a notice in the **Federal Register** (89 FR 16570) requesting public comment for 60 days on the extension, with revision, of the FR A. The Board revised the FR A by removing certain reporting and disclosure requirements that were specific to COVID–19 era lending facility programs established in 2020, which have since ceased operation. The comment period for this notice expired on May 6, 2024. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, June 25, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–14371 Filed 6–28–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM**Proposed Agency Information Collection Activities; Comment Request**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements (FR 2956; OMB No. 7100–0383).

DATES: Comments must be submitted on or before August 30, 2024.

ADDRESSES: You may submit comments, identified by FR 2956, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the 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.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghribi@frb.gov, (202) 452–3884.

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. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2956. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

- b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

- c. Ways to enhance the quality, utility, and clarity of the information to be collected;

- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements.

Collection identifier: FR 2956.

OMB control number: 7100–0383.

General description of collection: The FR 2956 collects detailed data on depository institutions' daily transactions trading of marketable U.S. Treasury securities and transactions trading of the debt and mortgage-backed securities (MBS) issued by U.S. federal government agencies including government-sponsored enterprises (agencies). The 2956 has two parts: Part 1 collects data on transactions in U.S. Treasury debt, and Part 2 collects transactions in debt and MBS issued by agencies. Every national bank, state member bank, state non-member bank, savings association, or U.S. branch and agency of a foreign bank filing a Notice by Financial Institutions of Government Securities Broker or Government Securities Dealer Activities (Form G–FIN; OMB No. 7100–0224) with average daily transaction volumes of over \$100 million, for U.S. Treasury debt, or over \$50 million, for agency-issued debt and MBS, during the prior fiscal year is subject to the these reporting requirements. Depository institutions subject to the reporting requirements of the FR 2956 electronically report transactions through the Board's data collection vendor, the Financial Industry Regulatory Authority (FINRA), utilizing its Trade Reporting and Compliance Engine (TRACE). Broker-dealers that are members of FINRA report transactions pursuant to the FINRA rules, and not the FR 2956. The Board receives data on transactions executed by FINRA members.

Proposed revisions: The Board proposes to revise Part 1 of the FR 2956 report, which pertains to the reporting of transactions in U.S. Treasury securities, by updating (i) the timeframe within which a depository institution

subject to the reporting requirements of Part 1 of the FR 2956 must report transactions in U.S. Treasury securities, and (ii) for transactions executed electronically, the minimum increment of time that must be used for reporting the execution times. The Board also proposes certain technical and clarifying revisions to Part 2 of the FR 2956 report. Specifically, the revisions are intended to make the definitions clearer and to correct an error.

Frequency: Daily, event-generated.

Respondents: Depository institutions that meet the above reporting thresholds. Prime brokers or depository institutions who file Form G-FIN and are FINRA members acting as an executing broker and that therefore already are subject to TRACE reporting pursuant to FINRA rules are exempt from this reporting requirement.

Total estimated number of respondents: 22.

Total estimated change in burden: (11,000).

Total estimated annual burden hours: 22,000.

Board of Governors of the Federal Reserve System, June 25, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-14365 Filed 6-28-24; 8:45 am]

BILLING CODE 6210-01-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, without revision, the Recordkeeping Provisions Associated with Stress Testing Guidance (FR 4202; OMB No. 7100-0348).

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 (which contain more detailed information about the information collections and burden estimates than this notice), 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/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 4202.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Recordkeeping Provisions Associated with Stress Testing Guidance.

Collection identifier: FR 4202.

OMB control number: 7100-0348.

General description of collection: The Stress Testing Guidance was issued jointly by the Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency on May 17, 2012. The interagency guidance outlines high-level principles for stress testing practices applicable to all Board-supervised banking organizations with more than \$10 billion in total consolidated assets.

Frequency: Event-generated.

Respondents: Board-supervised banking organizations with more than \$10 billion in total consolidated assets. These include state member banks, bank holding companies, and all other institutions for which the Board is the primary federal supervisor.

Total estimated number of respondents: 135.

Total estimated annual burden hours: 13,920.

Current actions: On February 16, 2024, the Board published a notice in the **Federal Register** (89 FR 12339) requesting public comment for 60 days on the extension, without revision, of the FR 4202. The comment period for this notice expired on April 16, 2024.

The Board did not receive any comments.

Board of Governors of the Federal Reserve System, June 25, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-14366 Filed 6-28-24; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Consumer Financial Protection Bureau's (CFPB's) Regulation B (FR B; OMB No. 7100-0201).

DATES: Comments must be submitted on or before August 30, 2024.

ADDRESSES: You may submit comments, identified by FR B, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/foia/proposedregs.aspx>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- *Email:* regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452-3819 or (202) 452-3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M-4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You

may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the 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.

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.

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. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR B. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper

performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Recordkeeping and Disclosure Requirements Associated with CFPB's Regulation B.

Collection identifier: FR B.

OMB control number: 7100-0201.

General description of collection: The Equal Credit Opportunity Act (ECOA) was enacted in 1974 and is implemented by the CFPB's Regulation B. The ECOA prohibits discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. To aid in implementation of this prohibition, the statute and Regulation B subject creditors to various mandatory disclosure requirements, notification provisions informing applicants of action taken on credit applications, provision of appraisal reports in connection with mortgages, credit history reporting, monitoring rules, and recordkeeping requirements. The FR B is the Board's information collection associated with the CFPB's Regulation B for institutions the Board supervises.

Frequency: Event generated and annually.

Respondents: Except those entities supervised by the CFPB, state member banks; subsidiaries of state member banks; subsidiaries of bank holding companies; U.S. branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured

state branches of foreign banks); commercial lending companies owned or controlled by foreign banks; and organizations operating under section 25 or 25A of the Federal Reserve Act.

Total estimated number of respondents: 841.

Total estimated annual burden hours: 81,346.

Board of Governors of the Federal Reserve System, June 25, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-14372 Filed 6-28-24; 8:45 am]

BILLING CODE 6210-01-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, without revision, the Recordkeeping Requirements Associated with Regulation F (FR F; OMB No. 7100-0331).

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 (which contain more detailed information about the information collections and burden estimates than this notice), 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/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR F.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Recordkeeping Requirements Associated with Regulation F.

Collection identifier: FR F.

OMB control number: 7100–0331.

General description of collection: The Board's Regulation F—Limitations on Interbank Liabilities (12 CFR part 206) establishes limits on depository institutions' credit exposure to individual correspondents in order to mitigate the risk that the failure of a correspondent would pose to an insured depository institution. Section 206.3 of Regulation F requires insured depository institutions to establish and maintain policies and procedures designed to prevent excessive exposure to correspondents.

Frequency: This information collection contains recordkeeping requirements. The creation of written policies and procedures concerning interbank liabilities is a mandatory one-time requirement. Subsequent changes to these policies and procedures would be on occasion, and they must be reviewed and approved by the depository institution's board of directors at least annually. The policies and procedures must be maintained, as amended.

Respondents: All depository institutions insured by the Federal Deposit Insurance Corporation (FDIC). The Board takes burden under the PRA with respect to all such entities.

Total estimated number of respondents: 4,655.

Total estimated annual burden hours: 4,753.

Current actions: On February 16, 2024 the Board published a notice in the **Federal Register** (89 FR 12344) requesting public comment for 60 days on the extension, without revision, of the FR F. The comment period for this notice expired on April 16, 2024. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, June 25, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–14364 Filed 6–28–24; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2024–02; Docket No. 2024–0002; Sequence No. 30]

GSA Electric Vehicle Battery Management Strategic Plan

AGENCY: General Services Administration.

ACTION: Request for information.

SUMMARY: The Office of Government-wide Policy (OGP), General Services Administration (GSA) requests input from the full range of institutions and organizations across all sectors—industry, government, academia, non-profits, venture capital, and others—for a strategic plan for Federal Electric Vehicle Fleet Battery Management in accordance with the National Defense Authorization Act for Fiscal Year 2023. This legislation tasks GSA to identify and gain insight into emerging contemporary trends, practices, and standards in EV Battery Management. OGP will subsequently develop a comprehensive strategic plan to help agencies maximize the full potential of EV Battery Management best practices and strategic benefits.

DATES: Interested persons or organizations are invited to submit comments on or before 11:59 p.m. (EST) on July 22, 2024.

ADDRESSES: Comments submitted in response to this notice may be sent by the following methods:

- *Email:* GSARegSec@gsa.gov. Email submissions should be machine-readable and not be copy-protected. Submissions should include “RFI Response: “EV Battery Management Strategic Plan” in the subject line of the message.

- *Online:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “Notice–MA–2024–02”. Select the link “Comment” that corresponds with “MA–2024–02.” Follow the instructions provided at the screen. Please include your name, company name (if any), and “MA–2024–02” on your attached document.

Instructions: Please submit comments only and cite Notice–MA–2024–02, in all correspondence related to this notice. Comments received generally

will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov>, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to James Vogelsinger, Director, Motor Vehicle Policy Division, Office of Government-wide Policy, Office of Asset and Transportation Management at james.vogelsinger@gsa.gov or by phone at 202–501–1764.

SUPPLEMENTARY INFORMATION:

I. Background

GSA has taken pride in developing innovative, cost-effective, and collaborative solutions to the growing and evolving Federal Electric Vehicle Fleet. OGP, Motor Vehicle Policy Division, also seeks to improve management and enhance the performance of the motor vehicle fleets by fostering interagency collaboration, shared services, and smart policies that allow Federal customer agencies to focus on their mission delivery.

As the EV fleet continues to grow, it has become increasingly important that agencies have a comprehensive, strategic plan for the management of these vehicles to maximize the full potential of their economic, environmental, and strategic benefits.

To this end, in the National Defense Authorization Act for Fiscal Year 2023, Congress requested GSA and OMB to coordinate with the heads of Federal agencies to develop a comprehensive, strategic plan for Federal Electric Vehicle Fleet Battery Management.

II. Purpose

The objective of this government-wide strategic plan is to identify and gain insight into emerging contemporary trends, research, and standards in EV battery optimal use, reuse, recycling, and disposal practices. The strategic plan for Federal Electric Vehicle Fleet Battery Management will incorporate guidelines for:

- (1) Optimal charging practices that will maximize battery longevity and prevent premature degradation;
- (2) Reusing and recycling the batteries of retired vehicles; and
- (3) Disposing electric vehicle batteries that cannot be reused or recycled.

III. Public Comments

Responses may address one or as many topics as desired from the enumerated list of Key EV Battery Management Focus Areas provided in

this RFI. Responses should include the name of the person(s) or organization(s) filing the comment, as well as the respondent type (e.g., scientists who are studying electric vehicle batteries and reuse and recycling solutions, laboratories, companies, academic institution engaged in battery use, reuse, and recycling research; industries, government, others interested in electric vehicle battery reuse and recycling, and electric vehicle equipment manufacturers and recyclers). Respondent's role in the organization may also be provided (e.g., researcher, administrator, student, program manager, journalist) on a voluntary basis.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. No business proprietary information, copyrighted information, or personally identifiable information (aside from that requested above) should be submitted in response to this RFI. Comments submitted in response to this RFI may be posted online or otherwise released publicly.

Mehul Parekh,

Acting Associate Administrator, Office of Government-wide Policy, U.S. General Services Administration.

[FR Doc. 2024-14347 Filed 6-28-24; 8:45 am]

BILLING CODE 6820-14-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve a revision of the currently approved information collection project: "Medical Expenditures Panel Survey—Household and Medical Provider Components." This proposed information collection was previously published in the **Federal Register** on April 19, 2024 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by July 31, 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. Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by email at REPORTSCLEARANCEOFFICER@ahrq.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Expenditures Panel Survey—Household and Medical Provider Components

AHRQ requests that OMB approve a revision to AHRQ's collection of information for the Medical Expenditures Panel Survey—Household and Medical Provider Components: OMB Control number 0935-0118, expiration November 30, 2025. Requested changes are for the Household Component (MEPS-HC) only.

The MEPS was initiated in 1996. Each year a new panel of sample households is selected. Recent annual MEPS-HC sample sizes average about 13,500 households. Data can be analyzed at either the person, family, or event level. The panel design of the survey, which includes 5 rounds of interviews covering 2 full calendar years, provides data for examining person level changes in selected variables such as expenditures, health insurance coverage, and health status.

This research has the following goals:

- (1) To produce nationally representative estimates of health care use, expenditures, sources of payment, and health insurance coverage for the U.S. civilian noninstitutionalized population.
- (2) To produce nationally representative estimates of respondents' health status, demographic and socio-economic characteristics, employment, access to care, and satisfaction with health care.

Proposed Changes for the 2025 MEPS-HC:

- *Core MEPS Interview and Adult SAQ*—The Core interview and the Adult

Self-Administered Questionnaire (SAQ) include four questions from the Consumer Assessment of Healthcare Providers and Systems 5.0 (CAHPS 5.0). These questions will have wording changes to update them to CAHPS 5.1. These wording changes will help identify telehealth utilization and access, as well as maintain consistency between CAHPS and MEPS-HC questionnaire items. Below are the four questions, both the current version and the proposed version:

Current: In the last 12 months, did {you/{PERSON}} have an illness, injury or condition that needed care right away in a clinic, emergency room, or doctor's office?

Proposed: In the last 12 months, did {you/{PERSON}} have an illness, injury, or condition that needed care right away?

Current: In the last 12 months, did you make any appointments for a check-up or routine care for {yourself/{PERSON}} at a doctor's office or clinic?

Proposed: In the last 12 months, did you make any in-person, phone, or video appointments for a check-up or routine care for {yourself/{PERSON}}?

Current: Looking at card CS-2, in the last 12 months, how often did you get an appointment for a check-up or routine care for {yourself/{PERSON}} at a doctor's office or clinic as soon as {you/he/she} needed?

Proposed: Looking at card CS-2, in the last 12 months, how often did you get an appointment for a check-up or routine care for {yourself/{PERSON}} as soon as {you/he/she} needed?

Current: Looking at card CS-3, in the last 12 months, not counting times {you/{PERSON}} went to an emergency room, how many times did {you/he/she} go to a doctor's office or clinic to get health care?

Proposed: Looking at card CS-3, in the last 12 months, not counting the times {you/{PERSON}} went to an emergency room, how many times did {you/he/she} get health care in person, by phone, or by video?

- *Burdens and Economic Impacts of Medical Care Self-Administered Questionnaire (ESAQ)*—The Office of the Secretary—Patient Centered Outcomes Research Trust Fund is funding this SAQ to expand the collection of economic outcomes data for patient-centered outcomes research (PCOR) via the Medical Expenditure Panel Survey (MEPS). The ESAQ will be completed during Round 3, Panel 30 and Round 5, Panel 29 (Spring 2025) by adult household members (aged 18 and over). The ESAQ will be administered in a mixed-mode of paper and online.

Respondents will be offered a \$20.00 monetary incentive to complete the ESAQ. This is a one-time data collection and the ESAQ will be removed from the MEPS after the 2025 fielding. The goal of the ESAQ is to enhance the MEPS data by adding new domains related to the economic burdens of seeking and receiving health care, to study economic outcomes in patient-centered outcomes research.

There is no other survey that is now or has been recently conducted that will meet the objectives of the ESAQ. The ESAQ will supplement MEPS data on direct care expenditures with data on major indirect costs, including time costs of getting care and administrative hassles; lost work productivity due to presenteeism, lost productivity in non-market activities, and time costs of informal care. With this new data, researchers will be able to better examine health care economic burdens and equity in health care access, utilization, and outcomes, for example to aggregate social costs of health care and poor health, examine indirect costs associated with common conditions, and analyze disparities and equity in indirect costs.

In developing the ESAQ, AHRQ consulted with several experts in the area and used their expertise to identify priority topics and questions that have already been tested and widely accepted. Nearly all items are either from Federal surveys, federally funded surveys, or adapted from instruments that have been carefully validated. Two questions related to affordability and access are from Kaiser Family Foundation surveys. One question about informal care was cognitively tested in a prior question development project. One question on the high-priority topic of administrative hassles of health insurance was developed from phrases from the carefully tested and widely accepted Consumer Assessment of Health Plans and Systems.

- *Cancer Self-Administered Questionnaire (CSAQ)*—The CSAQ will be removed from the 2025 MEPS–HC.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including

activities with respect to the cost and use of health care services and with respect to health statistics and surveys. 42 U.S.C. 299a(a)(3) and (8); 42 U.S.C. 299b-2.

Method of Collection

The MEPS–HC uses a combination of computer assisted personal interviewing (CAPI), computer assisted video interviewing (CAVI), and self-administered paper and web questionnaires, to collect information about each household member, and the survey builds on this information from interview to interview. CAVI is a new data collection technology and offers the best of both telephone and in-person interviewing, while offering opportunities for cost savings and more accurate reporting.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the MEPS–HC and the MEPS–MPC.

MEPS–HC:

1. *MEPS–HC Core Interview*—completed by 12,683 “family level” respondents. Since the MEPS–HC typically consists of 5 rounds of interviewing covering a full two years of data, the annual average number of responses per respondent is 2.5 responses per year. The MEPS–HC core requires an average response time of 88 minutes to administer.

2. *Adult SAQ*—completed once during the 2-year panel, in rounds 2 and 4 during odd numbered years, making the annualized average 0.5 times per year. The Adult SAQ will be completed by 15,600 adults and requires an average of 7 minutes to complete.

3. *PSAQ*—completed once during the 2-year panel, in rounds 2 and 4 during even numbered years, making the annualized average 0.5 times per year. The PSAQ will be completed by 15,600 adults and requires an average of 7 minutes to complete.

4. *DCS*—completed by 1,398 persons with diagnosed diabetes each year and requires 3 minutes to complete.

5. *Burdens and Economic Impacts of Medical Care SAQ*—completed by 16,170 and is estimated to take 10 minutes to complete. This SAQ will be completed only once in 2025 and will

be removed in 2026; to annualize the burden hours the number of responses per respondent is 0.5 times per year.

6. *Authorization forms for the MEPS–MPC and Pharmacy Survey*—completed by 7,386 respondents. Each respondent will complete an average of 5.2 forms each year, with each form requiring an average of 3 minutes to complete.

7. *Validation interview*—conducted with approximately 1,826 respondents each year and requires 5 minutes to complete.

The total annual burden hours for the respondent's time to participate in the MEPS–HC is estimated to be 51,814 hours.

MEPS–MPC:

1. *Contact Guide/Screening Call*—conducted with 38,683 providers and pharmacies each year and requires 5 minutes to complete.

2. *Home Care Providers Event Form*—completed by 540 providers, with each provider completing an average of 5 forms and each form requiring 3 minutes to complete.

3. *Office-based Providers Event Form*—completed by 9,300 providers. Each provider will complete an average of 2.8 forms and each form requires 3 minutes to complete.

4. *Separately Billing Doctors Event Form*—will be completed by 4,676 providers, with each provider completing 1.2 forms on average, and each form requiring 3 minutes to complete.

5. *Hospital Event Form*—completed by 3,935 hospitals or HMOs. Each hospital or HMO will complete 5.9 forms on average, with each form requiring 3 minutes to complete.

6. *Institutions (non-hospital) Event Form*—completed by 86 institutions, with each institution completing 1.3 forms on average, and each form requiring 3 minutes to complete.

7. *Pharmacy Event Form*—completed by 6,112 pharmacies. Each pharmacy will complete 31.3 forms on average, with each form requiring 3 minutes to complete.

The total burden hours for the respondent's time to participate in the MEPS–MPC is estimated to be 15,674 hours. The total annual burden hours for the MEPS–HC and MPC is estimated to be 67,488 hours.

EXHIBIT 1—MEPS—HC AND MPC ESTIMATED ANNUALIZED RESPONDENTS AND BURDEN HOURS, 2025 TO 2027

Form name	Number of respondents ^a	Number of responses per respondent	Hours per response	Total burden hours
MEPS—HC				
1. MEPS—HC Core Interview	12,683	2.5	88/60	46,504
2. Adult SAQ *	15,600	0.5	7/60	910
3. Preventive Care SAQ (PSAQ) **	15,600	0.5	7/60	910
4. Diabetes Care Survey (DCS)	1,398	1	3/60	70
5. Burdens and Economic Impacts of Medical Care SAQ	16,170	0.5	10/60	1,348
6. Authorization forms for the MEPS—MPC Provider and Pharmacy Survey	7,386	5.2	3/60	1,920
7. MEPS Validation Interview	1,826	1	5/60	152
Subtotal for the MEPS—HC	70,663	.....	.....	51,814
MEPS—MPC				
1. Contact Guide/Screening Call	38,683	1	5/60	3,224
2. Home Care Providers Event Form	540	5.0	3/60	135
3. Office-based Providers Event Form	9,300	2.8	3/60	1,302
4. Separately Billing Doctors Event Form	4,676	1.2	3/60	281
5. Hospitals & HMOs (Hospital Event Form)	3,935	5.9	3/60	1,161
6. Institutions (non-hospital) Event Form	86	1.3	3/60	6
7. Pharmacies Event Form	6,112	31.3	3/60	9,565
Subtotal for the MEPS—MPC	63,332	.....	.....	15,674
Grand Total	133,995	.....	.....	67,488

* The Adult SAQ is completed once every two years, on the odd numbered years.

** The PSAQ is completed once every two years, on the even numbered years.

^a See the Supporting Statement Part B, Table 1 and Table 3, for information on the sample size and number of respondents.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this information collection. The annual cost burden for the MEPS—HC is estimated to be \$1,631,105 and the annual cost burden for the MEPS—MPC is estimated to be \$326,612. The total annual cost burden for the MEPS—HC and MPC is estimated to be \$1,957,716.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Total burden hours	Average hourly wage rate	Total cost burden
MEPS—HC			
1. MEPS—HC Core Interview	46,504	* \$31.48	\$1,463,946
2. Adult SAQ *	910	* \$31.48	28,647
3. Preventive Care SAQ (PSAQ) **	910	* \$31.48	27,082
4. Diabetes Care Survey (DCS)	70	* \$31.48	2,204
5. Burdens and Economic Impacts of Medical Care SAQ	1,348	* \$31.48	42,435
6. Authorization forms for the MEPS—MPC Provider and Pharmacy Survey	1,920	* \$31.48	60,442
7. MEPS Validation Interview	152	* \$31.48	4,785
Subtotal for the MEPS—HC	51,814	.....	1,631,105
MEPS—MPC			
1. Contact Guide/Screening Call	3,224	** 20.85	67,220
2. Home Care Providers Event Form	135	** 20.85	2,815
3. Office-based Providers Event Form	1,302	** 20.85	27,147
4. Separately Billing Doctors Event Form	281	** 20.85	5,859
5. Hospitals & HMOs (Hospital Event Form)	1,161	** 20.85	24,207
6. Institutions (non-hospital) Event Form	6	** 20.85	125
7. Pharmacies Event Form	9,565	** 20.83	199,239
Subtotal for the MEPS—MPC	15,674	.....	326,612
Grand Total	67,488	.....	1,957,716

* Mean hourly wage for All Occupations (00–0000).

** Mean hourly wage for Medical Secretaries (43–6013).

*** Mean hourly wage for Pharmacy Technicians (29–2052).

Occupational Employment Statistics, May 2023 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 26, 2024.

Marquita Cullom,

Associate Director.

[FR Doc. 2024–14474 Filed 6–28–24; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2024–0050]

Vessel Sanitation Program: Annual Program Status Meeting; Request for Comment

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) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain comment on the FY 2024 annual Vessel Sanitation Program (VSP) public meeting. The August 5, 2024, annual meeting is a forum for CDC to update cruise industry representatives and other interested persons on programmatic activities and future plans. CDC is opening a public

docket for additional comments and materials. The official record of this meeting will remain open through August 30, 2024 so comments related to the discussion topics can be part of the record.

DATES: Written comments must be received on or before August 30, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0050, by either of the methods listed below. *Do not submit comments by email. CDC does not accept comments by email.*

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS S106–6, Atlanta, Georgia 30341.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Captain Luis Rodriguez, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS S106–6, Atlanta, Georgia 30341; email: vsp@cdc.gov; phone: (800) 323–2132.

SUPPLEMENTARY INFORMATION:

Meeting Purpose

The purpose of the annual meeting is to inform the public of VSP's activities to help the cruise industry prevent the introduction and spread of acute gastroenteritis (AGE) to U.S. ports from ships under VSP's jurisdiction. Ships under VSP jurisdiction have 13 or more passengers and an itinerary that includes foreign and U.S. ports.

Discussion topics: VSP programmatic activities, epidemiology data and projects, and partner updates.

Meeting accessibility: Interested persons or organizations are invited to participate in the annual meeting in person, but space is limited to approximately 125 people. Advanced registration is required. Information regarding logistics is available on the VSP website (<https://www.cdc.gov/vessel-sanitation/php/meetings->

announcements). Attendees at the annual meeting normally include cruise ship industry officials, private sanitation consultants, and other interested parties.

Deadline for requests for special accommodations: Persons wishing to participate in the public meeting who need special accommodations should contact Captain Luis Rodriguez by July 15, 2024 (email: vsp@cdc.gov or phone: (800) 323–2132).

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. In addition, CDC invites comments specifically on the following topics for discussion at the public meeting: VSP programmatic activities, epidemiology data and projects, and partner updates.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on <https://www.regulations.gov>. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. *Do not submit comments by email. CDC does not accept comment by email.*

Noah Aleshire,

Chief Regulatory Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–14475 Filed 6–28–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-2560]

Essential Drug Delivery Outputs for Devices Intended To Deliver Drugs and Biological Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Essential Drug Delivery Outputs for Devices Intended to Deliver Drugs and Biological Products.” This guidance addresses key aspects of drug delivery performance information for devices, and combination products that include device constituent parts, intended for delivery of a human drug, including a biological product (herein referred to as drug delivery devices). The guidance describes FDA’s recommendations related to the device design outputs that are essential for establishing and assessing drug delivery performance. FDA is providing recommendations for development and organization of device drug-delivery performance information to improve the consistency of this information in applications and submissions. The guidance is intended to facilitate and streamline development of drug delivery devices.

DATES: Submit either electronic or written comments on the draft guidance by September 30, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note

that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2024-D-2560 for “Essential Drug Delivery Outputs for Devices Intended to Deliver Drugs and Biological Products.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed

except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500. You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Patricia Love, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993, 301-796-8930, Patricia.Love@fda.hhs.gov or combination@fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Essential Drug Delivery Outputs for Devices Intended to Deliver Drugs and Biological Products.” This guidance addresses key aspects of drug delivery performance information for devices, and combination products that include device constituent parts, intended for delivery of a human drug, including a biological product (herein referred to as drug delivery devices). The guidance describes FDA’s recommendations related to the device design outputs that are essential for establishing and assessing drug delivery performance. Device drug-delivery performance information is intended to demonstrate that the device drug-delivery function consistently performs as intended. As discussed further in the guidance, essential drug delivery output (EDDO) refers to the device drug-delivery design outputs necessary to ensure the drug delivery function.

This guidance recommends an approach to identifying EDDOs, provides examples of EDDOs for specific types of devices, and describes the information and data related to EDDOs that is provided in an application or submission. Examples of products that are within the scope of this guidance include syringes, injectors (e.g., autoinjector, on body injector), infusion products (e.g., infusion pumps), nasal sprays, inhalers, nebulizers, and vaginal systems.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Essential Drug Delivery Outputs for Devices Intended to Deliver Drugs and Biological Products." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 for investigational new drug applications have been approved under OMB control number 0910–0014 and the collections of information in 21 CFR part 812 for investigational device exemptions have been approved under OMB control number 0910–0078. The collections of information in 21 CFR part 314 for new drug applications and abbreviated new drug applications, including the collections of information contained in the guidance for industry entitled "Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products" have been approved under OMB control number 0910–0001. The collections of information in 21 CFR parts 601 and 610 for biologics license applications have been approved under OMB control number 0910–0338. The collections of information in section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)) have been approved under OMB control number 0910–0718. The collections of information in 21 CFR part 814 for premarket approval applications have been approved under OMB control number 0910–0231. The collections of information in section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), subpart

E for 510(k) notifications, have been approved under OMB control number 0910–0120. The collections of information in 21 CFR 860, subpart D for De Novo classifications have been approved under OMB control number 0910–0844. The collections of information in 21 CFR part 211 for current good manufacturing practice for finished pharmaceuticals have been approved under OMB control number 0910–0139. The collections of information in 21 CFR part 820 for the quality system regulation have been approved under OMB control number 0910–0073. The collections of information in 21 CFR part 807, subpart E for premarket notification have been approved under OMB control number 0910–0120. The collections of information for meetings related to generic drug development have been approved under OMB control number 0910–0727. The collections of information in the guidance for industry and FDA staff entitled "Requests for Feedback on Medical Device Submissions: The Q-Submission Program and Meetings with the Food and Drug Administration Staff" have been approved under OMB control number 0910–0756.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/combination-products/guidance-regulatory-information/combination-products-guidance-documents>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: June 25, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–14409 Filed 6–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Lists of Designated Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice informs the public of the availability of the complete lists of all geographic areas, population groups, and facilities designated as

primary medical care, dental health, and mental health professional shortage areas (HPSAs) in a designated status as of April 15, 2024. The lists are available on the shortage area topic page on HRSA's data.hrsa.gov website. All currently designated HPSAs remain designated until final lists are published later this fall. HPSA designations that are currently proposed for withdrawal will remain in this status until the publication of the HPSA **Federal Register** notice on or before November 1, 2024. HPSAs proposed for withdrawal will be re-evaluated before final publication if additional information is made available to HPSA by states. If these HPSAs do not meet the requirements for designation at the time of the publication of the HPSA **Federal Register** on or before November 1, 2024, they will be withdrawn.

ADDRESSES: Complete lists of currently designated HPSAs as of April 15, 2024, and include those proposed for withdrawal, are available on the website at <https://data.hrsa.gov/tools/health-workforce/shortage-areas/frn>. Frequently updated information on HPSAs is available at <https://data.hrsa.gov/topics/health-workforce/health-workforce-shortage-areas>. Information on shortage designations is available at <https://bhw.hrsa.gov/workforce-shortage-areas/shortage-designation>.

FOR FURTHER INFORMATION CONTACT: For further information on the HPSA designations listed on the website or to request additional designation, withdrawal, or reapplication for designation, please contact Matthew Patterson, Acting Branch Chief, Shortage Designation Branch, Division of Policy and Shortage Designation, Bureau of Health Workforce (BHW), HRSA, 5600 Fishers Lane, Rockville, Maryland 20857, sdb@hrsa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 332 of the Public Health Service (PHS) Act, 42 U.S.C. 254e, provides that the Secretary shall designate HPSAs based on criteria established by regulation. HPSAs are defined in section 332 to include (1) urban and rural geographic areas with shortages of health professionals, (2) population groups with such shortages, and (3) facilities with such shortages. Section 332 further requires that the Secretary annually publish lists of the designated geographic areas, population groups, and facilities. The lists of HPSAs are to be reviewed at least annually and revised as necessary.

Final regulations (42 CFR part 5) were published on November 17, 1980 (45 FR 75996) that include the criteria for designating HPSAs. Criteria were defined for seven health professional types: primary medical care, dental, psychiatric, vision care, podiatric, pharmacy, and veterinary care. The criteria for correctional facility HPSAs were published on October 29, 1987 (52 FR 41594) and revised March 2, 1989 (54 FR 8735). The criteria for psychiatric HPSAs were expanded to mental health HPSAs on January 22, 1992 (57 FR 2473). Currently funded PHS Act programs use the primary medical care, mental health, or dental HPSA or relevant sub-score designations such as Maternity Care Target Areas.

HPSA designation offers access to potential federal assistance. Public or private nonprofit entities are eligible to apply for assignment of National Health Service Corps personnel to provide primary medical care, mental health, or dental health services in or to these HPSAs. National Health Service Corps health professionals enter into service agreements to serve in federally designated HPSAs. Entities with clinical training sites located in HPSAs are eligible to receive priority for certain residency training program grants administered by HRSA's Bureau of Health Workforce (BHW). Other federal programs also utilize HPSA designations. For example, under authorities administered by the Centers for Medicare & Medicaid Services, certain qualified providers in geographic area HPSAs are eligible for increased levels of Medicare reimbursement.

Content and Format of Lists

The three lists of designated HPSAs are available on the HRSA Data Warehouse shortage area topic web page, including those proposed for withdraw, and include a snapshot of all geographic areas, population groups, and facilities that were designated HPSAs as of April 15, 2024. This notice incorporates the most recent annual reviews of designated HPSAs and supersedes the HPSA lists published in the **Federal Register** on January 2, 2024 (FR/Vol. 89, No. 1, Tuesday, January 2, 2024/Document Number 2023–28844). The proposed for withdraw HPSAs will remain in that status until the lists are finalized this fall. States have the opportunity to provide additional information as part of the review of proposed for withdraw HPSAs prior to the lists being finalized this fall.

In addition, all Indian Tribes that meet the definition of such Tribes in the Indian Health Care Improvement Act of

1976, 25 U.S.C. 1603, are automatically designated as population groups with primary medical care and dental health professional shortages. Further, the Health Care Safety Net Amendments of 2002 provides eligibility for automatic facility HPSA designations for all federally qualified health centers (FQHCs) and rural health clinics that offer services regardless of ability to pay. Specifically, these entities include FQHCs funded under section 330 of the PHS Act, FQHC Look-Alikes, and Tribal and urban Indian clinics operating under the Indian Self-Determination and Education Act of 1975 (25 U.S.C. 450) or the Indian Health Care Improvement Act. Many, but not all, of these entities are included on this listing. Absence from this list does not exclude them from HPSA designation; facilities eligible for automatic designation are included in the database when they are identified.

Each list of designated HPSAs is arranged by state. Within each state, the list is presented by county. If only a portion (or portions) of a county is (are) designated, a county is part of a larger designated service area, or a population group residing in a county or a facility located in the county has been designated, the name of the service area, population group, or facility involved is listed under the county name. A county that has a whole county geographic or population group HPSA is indicated by the phrase "County" following the county name.

Development of the Designation and Withdrawal Lists

Requests for designation or withdrawal of a particular geographic area, population group, or facility as a HPSA are received continuously by BHW. Under a Cooperative Agreement between HRSA and the 54 state and territorial Primary Care Offices (PCOs), PCOs conduct needs assessments and submit applications to HRSA to designate areas as HPSAs. BHW refers requests that come from other sources to PCOs for review. In addition, interested parties, including Governors, state Primary Care Associations, and state professional associations, are notified of requests so that they may submit their comments and recommendations.

BHW reviews each recommendation for possible addition, continuation, revision, or withdrawal. Following review, BHW notifies the appropriate agency, individuals, and interested organizations of each designation of a HPSA, rejection of recommendation for HPSA designation, revision of a HPSA designation, and/or advance notice of pending withdrawals from the HPSA

list. Designations (or revisions of designations) are effective as of the date on the notification from BHW and are updated daily on the HRSA Data Warehouse website. The effective date of a withdrawal will be the next publication of a notice regarding the list of designated HPSAs in the **Federal Register**.

Carole Johnson,
Administrator.

[FR Doc. 2024–14477 Filed 6–28–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI): Inviting Comments and Suggestions on an ODS Strategic Plan 2025–2029: A Blueprint for a Coordinated Dietary Supplement Research Agenda at NIH

AGENCY: National Institutes of Health, HHS.

ACTION: Request for information.

SUMMARY: The National Institutes of Health (NIH), Office of Dietary Supplements (ODS) is continuing to use a structured planning process to develop its five-year strategic plans. After a new director joined ODS in July 2023 a new strategic plan for 2025–2029 was developed titled "A Blueprint for a Coordinated Dietary Supplement Research Agenda at NIH." ODS is committed to engaging its partners and other interested parties including representatives of the scientific community, industry, other federal agencies, policymakers, and the public in the strategic planning process by soliciting their comments on the draft ODS Strategic Plan for Fiscal Years (CY) 2025–2029.

DATES: The RFI is open for public comment for a period of 60 days. To ensure consideration, comments must be submitted by August 30, 2024.

ADDRESSES: All comments must be submitted electronically to ODSplan@od.nih.gov. You will receive an electronic confirmation acknowledging receipt of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cohen, Ph.D., at ODSplan@od.nih.gov or (301) 435–2920.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the 21st Century Cures Act, wherein NIH institutes are required to regularly update their strategic plans. The purpose of the CY 2025–2029 ODS Strategic Plan (<https://ods.od.nih.gov/>

About/StrategicPlan.aspx) is to communicate how ODS will advance its mission to coordinate cutting-edge dietary supplement research across NIH Institutes, Centers, and Offices (ICOs) and other federal agencies to foster knowledge and optimize health across the lifespan. The plan articulates ODS' priorities as follows:

- To coordinate and support dietary supplement research focused on biological, population, and product sciences.
- To develop NIH dietary supplement initiatives that incorporate rigorous dietary supplement research methods and make best use of available NIH funding mechanisms.
- To support ODS programs and develop and disseminate dietary supplement research findings and research resources to ODS audiences.

ODS has completed a draft of its Five-Year Strategic Plan for CY 2025–2029 (<https://ods.od.nih.gov/About/StrategicPlan.aspx>) and is interested in receiving feedback from all interested parties on the following:

- Any additional emerging public health issues or knowledge gaps that ODS can help address.
- Partnerships NIH should pursue, both inside and outside of government, to advance research on dietary supplements.

ODS encourages organizations to submit a single response reflective of the views of the organization as a whole.

Responses to this RFI are voluntary and may be submitted anonymously. Please do not include any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. NIH will use the information submitted in response to this Request for Information (RFI) at its discretion. NIH reserves the right to use any submitted information on public websites, in reports, in summaries of the state of the science, in any possible resultant solicitation(s), grant(s), or cooperative agreement(s), or in the development of future funding opportunity announcements. This RFI is for informational and planning purposes only and is not a solicitation for applications or an obligation on the part of the Government to provide support for any ideas identified in response to it. Please note that the Government will not pay for the preparation of any information submitted or for the use of that information.

No basis for claims against the U.S. Government shall arise as a result of a response to this RFI or from the

Government's use of such information. Additionally, the Government cannot guarantee the confidentiality of the information provided.

Dated: June 20, 2024.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2024–14481 Filed 6–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–23–110: Biomedical Technology Optimization and Dissemination Center (BTOD).

Date: July 24, 2024.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Jingwu Xie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–8625, jingwu.xie@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Disease Control and Applied Immunology.

Date: July 29, 2024.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Emily Foley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–3016, emily.foley@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular and Vascular Sciences.

Date: July 30, 2024.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Courtney Elaine Watkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–3093, courtney.watkins2@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics on HIV Virology, Immunopathogenesis, Drug and Vaccine Development.

Date: July 31, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kumud Singh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 761–7830, kumud.singh@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.

Date: July 31–August 1, 2024.

Time: 10:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 907–H, Bethesda, MD 20892, (301) 379–5632, hfriedman@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: HIV/AIDS Behavioral Panel.

Date: August 2, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, rubertm@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333,

93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 25, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–14423 Filed 6–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Cancer Diagnosis and Treatment (CDT), July 17, 2024, 09:00 a.m. to July 18, 2024, 07:30 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on June 25, 2024, 89 FR 53113, FR Doc 2024–13839.

This meeting is being amended to change the meeting panel name from Cancer Diagnosis and Treatment (CDT) to Small Business: Cancer Diagnosis and Treatment (CDT). The meeting is closed to the public.

Dated: June 25, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–14369 Filed 6–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Research Education Program Advancing the Careers of a Diverse Research Workforce (R25 Clinical Trial Not Allowed).

Date: July 29, 2024.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G48, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G48, Rockville, MD 20892, 301–435–0903, saadisoh@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 25, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–14390 Filed 6–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (Parent R13 Clinical Trial Not Allowed).

Date: July 29–31, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of

Health, 5601 Fishers Lane, MSC 9834, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: Rekha Dhanwani, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC 9834, Rockville, MD 20852, (240) 627–3076, rekha.dhanwani@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 25, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–14391 Filed 6–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

FOR FURTHER INFORMATION CONTACT:

Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); Anastasia.Flanagan@samhsa.hhs.gov (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) publishes a notice listing all HHS-certified laboratories and Instrumented Initial Testing Facilities (IITFs) in the **Federal Register** during the first week of each month, in accordance with Section 9.19 of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and

Section 9.17 of the Mandatory Guidelines using Oral Fluid. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list>.

HHS separately notifies Federal agencies of the laboratories and IITFs currently certified to meet the standards of the Mandatory Guidelines using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); January 23, 2017 (82 FR 7920); and on October 12, 2023 (88 FR 70768).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020, and subsequently revised in the **Federal Register** on October 12, 2023 (88 FR 70814).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for Federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to

be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved to Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid effective October 10, 2023 (88 FR 70814), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved to Conduct Urine Drug Testing:

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare*, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved to Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St. Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ, 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295, (Formerly: Legacy Laboratory Services Toxicology MetroLab)

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Omega Laboratories, Inc.,* 2150 Dunwin Drive, Unit 1 & 2, Mississauga, ON, Canada L5L 5M8, 289–919–3188

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403,

610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories continued under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS’ NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory as meeting the minimum standards of the current Mandatory Guidelines published in the **Federal Register**. After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in

the NLCP certification maintenance program. DOT established this process in July 1996 (61 FR 37015) to allow foreign laboratories to participate in the DOT drug testing program.

Anastasia D. Flanagan,
Public Health Advisor, Division of Workplace Programs.
[FR Doc. 2024–14411 Filed 6–28–24; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec, LLC (Belle Chasse, LA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.
ACTION: Notice of accreditation and approval of AmSpec, LLC (Belle Chasse, LA) as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec, LLC (Belle Chasse, LA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 11, 2023.

DATES: AmSpec, LLC (Belle Chasse, LA) was approved and accredited as a commercial gauger and laboratory as of May 11, 2023. The next inspection date will be scheduled for May 2026.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec, LLC, 9221 Highway 13, Belle Chasse, LA 70037, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of May 11, 2023.

AmSpec, LLC (Belle Chasse, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurement.

AmSpec, LLC (Belle Chasse, LA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27–14	D 2622	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–58	D 5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or

gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

James D. Sweet,
Laboratory Director, Houston, Laboratories and Scientific Services Directorate.
[FR Doc. 2024–14360 Filed 6–28–24; 8:45 am]
BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****[OMB Control Number 1651–0048]****Agency Information Collection Activities; Extension; Declaration of Person Who Performed Repairs or Alterations****AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.**ACTION:** 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than August 30, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0048 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments: *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written

comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration of Person Who Performed Repairs or Alterations.

OMB Number: 1651–0048.

Form Number: N/A.

Current Actions: This submission will be made to extend the expiration date without a change to this information collection.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The “Declaration of Person Who Performed Repairs or Alterations,” as required by 19 CFR 10.8, is used in connection with the entry of articles entered under subheadings 9802.00.40 and 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS¹). Articles entered under these HTSUS provisions are articles that were in the United States and exported temporarily for repairs or alterations, and then returned to the United States. Upon their return, duty is only assessed on the value of the repairs performed abroad and not on the full value of the article. The declaration under 19 CFR 10.8(a) includes information such as a description of the article and the repairs or alterations; the value of the article and the repairs or alterations; and a declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts. The information in this declaration is used by CBP to determine the value of the repairs or

alterations, and to assess duty only on the value of those repairs or alterations.

These requirements apply to the trade community who are familiar with CBP regulations and the tariff schedules and are required by law to provide this declaration.

Type of Information Collection: Declaration for Repairs or Alterations.

Estimated Number of Respondents: 10,236.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 20,472.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 10,236.

Dated: June 25, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–14361 Filed 6–28–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY**U.S. Immigration and Customs Enforcement****[Docket No. ICEB–2024–0006]****RIN 1653–ZA50****Employment Authorization for Haitian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Haiti**

AGENCY: U.S. Immigration and Customs Enforcement; Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) is suspending certain regulatory requirements for F–1 nonimmigrant students from Haiti who are experiencing severe economic hardship as a direct result of the current crisis in Haiti. The Secretary of Homeland Security (Secretary) is providing relief to these students who are in lawful F–1 nonimmigrant status, so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant status.

DATES: This action covers eligible Haitian F–1 nonimmigrant students beginning on August 4, 2024, and ending on February 3, 2026.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and

¹ <https://hts.usitc.gov/current>.

Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: sevp@ice.dhs.gov, telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at <https://www.ice.gov/sevis/>.

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Haiti regardless of country of birth (or individuals having no nationality who last habitually resided in Haiti), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of the current crisis in Haiti. The original notice, which applied to F–1 nonimmigrant students who met certain criteria, including having been lawfully present in the United States in F–1 nonimmigrant status on January 12, 2010, was effective from September 15, 2010, until July 22, 2011. *See* 75 FR 56120 (Sep. 15, 2010). A subsequent notice provided for an extension from July 22, 2011, until January 22, 2013. *See* 76 FR 28997 (May 19, 2011). A third notice provided another extension from October 1, 2012, through July 22, 2014. *See* 77 FR 59942 (Oct. 1, 2012). A fourth notice provided for another extension from March 3, 2014, until January 22, 2016. *See* 79 FR 11805 (Mar. 3, 2014). A fifth notice provided for another extension from August 25, 2015, until July 22, 2017. *See* 80 FR 51579 (Aug. 25, 2015). A new notice was issued on August 3, 2021, expanding the eligible population, and was effective from August 3, 2021, through February 3, 2023. *See* 86 FR 41857 (Aug. 3, 2021). Most recently, DHS issued another notice which applied to F–1 nonimmigrant students who met certain criteria, including having been lawfully present in the United States in F–1 nonimmigrant status on January 26, 2023, and was effective from February 4, 2023, through August 3, 2024. *See* 88 FR 5016 (Jan. 26, 2023). Effective with this publication, suspension of the employment limitations is available through February 3, 2026, for those who are in lawful F–1 nonimmigrant status on the date of publication of this notice.

DHS will deem an F–1 nonimmigrant student granted employment authorization through this Notice to be engaged in a “full course of study” for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.¹ *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

- (1) Are a citizen of Haiti regardless of country of birth (or an individual having no nationality who last habitually resided in Haiti);
- (2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);
- (3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;
- (4) Are currently maintaining F–1 nonimmigrant status; and
- (5) Are experiencing severe economic hardship as a direct result of the current crisis in Haiti.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to Haitian F–1 nonimmigrant students experiencing severe economic hardship due to the current crisis in Haiti. Based on its review of country conditions in Haiti and input received from the U.S. Department of State (DOS), DHS is taking action to allow eligible F–1 nonimmigrant students from Haiti to request employment authorization, work an increased number of hours while school is in session, and reduce

their course load while continuing to maintain F–1 nonimmigrant student status.

The security situation in Haiti has deteriorated drastically as violent criminal groups have expanded their areas of control throughout Haiti, disrupting the social and economic lives of many Haitians.² In September 2023, the Congressional Research Service (CRS) noted that “Haiti lacks an elected president and legislature following the July 2021 assassination of President Jovenel Moïse.”³ This destabilizing political and security situation has made it difficult for Haiti to effectively combat the worsening security and humanitarian crises which has been exacerbated by increased gang violence, shortages of food and fuel, and a resurgence of cholera.⁴

Security and Political Concerns

Haiti is divided into ten departments, and gang violence heavily affects at least three of them, with gang presence established in at least six departments.⁵ Gang violence has escalated and expanded, “spreading from the capital Port-au-Prince through the center of the country to its two other major cities, Gonaïves [Artibonite department] and Cap-Haïtien [Nord department], with a significant increase in killings, kidnappings and rapes in the past few months [mid-2023].”⁶ In January 2024, the United Nations Integrated Office in Haiti (BINUH) reported that the Ouest department, where Port-au-Prince is located, has also been “affected by extreme insecurity marked by indiscriminate armed gang violence against civilians and attacks against police units and infrastructure.”⁷ In

² “Living a Nightmare”: Haiti Needs an Urgent Rights-Based Response to Escalating Crisis, Human Rights Watch, Aug. 14, 2023, available at <https://www.hrw.org/report/2023/08/14/living-nightmare/haiti-needs-urgent-rights-based-response-escalating-crisis> (last visited Jan. 22, 2024).

³ Clare Ribando Seelke and Karla I. Rios, Haiti: Recent Developments and U.S. Policy, Congressional Research Service (CRS), Sep. 18, 2023, available at <https://sgp.fas.org/crs/row/R47394.pdf> (last visited Jan. 19, 2024).

⁴ *Id.*

⁵ Haiti: Humanitarian impact of gang violence, ACAPS, June 2, 2023, available at <https://reliefweb.int/report/haiti/acaps-briefing-note-haiti-humanitarian-impact-gang-violence-02-june-2023> (last visited Jan. 24, 2024).

⁶ Edith M. Lederer, Gang violence in Haiti is escalating and spreading with a significant increase in killings, UN says, The Associated Press, Sep. 27, 2023, available at <https://apnews.com/article/haiti-gang-violence-un-report-killings-5d3f7ff272b7303852869dfc67692a23> (last visited Jan. 19, 2024).

⁷ United Nations Integrated Office in Haiti—Report of the Secretary-General, UN Security Council, p.3, Jan. 15, 2024, available at <https://reliefweb.int/report/haiti/united-nations-integrated->

¹ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study,” *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of February 3, 2026, provided the student satisfies the minimum course load requirements in this notice.

addition, gang influence in Haiti has grown at an “alarming rate” to sections of Port-au-Prince that were “previously less affected” by gangs.⁸

As of September 2023, gangs reportedly controlled or influenced “about 80 percent of the Port-au-Prince metropolitan area,” while “the remaining 20 percent” suffered “from the incursions by gangs looking to conduct kidnappings, robberies, murders, and other crimes.”⁹ Reports of homicides and kidnappings increased significantly in 2023. BINUH reported a 119.4 percent increase in homicides from 2022 and an 83 percent increase in kidnappings from 2022.¹⁰

The acting Prime Minister of Haiti, Ariel Henry, traveled abroad at the beginning of 2024 for international engagements. During his travel, a series of coordinated gang attacks began against targets in Haiti’s capital and beyond, freeing over 4,000 inmates and closing the country’s main international airport. Since then, Henry has been unable to return to Haiti.¹¹ On March 6, 2024, Jimmy “Barbecue” Cherizier, the leader of one of Haiti’s most powerful gang alliances, the G9, warned that unless Henry stepped down, there would be civil war and genocide in Haiti.¹² In March 2024, Caribbean Community (CARICOM) leaders, with agreement from key Haitian stakeholders, announced that Henry will resign once a transitional presidential council is established and an interim leader is selected.¹³ Additionally, Haiti currently has no

elected officials.¹⁴ Haiti has not held a national election since 2016, and since the 2021 assassination of president Jovenel Moïse, Haiti has lacked a president.¹⁵ On April 24, 2024, Henry officially resigned as acting Prime Minister of Haiti, clearing the way for a new government to be formed.¹⁶ Also, on April 24, 2024, the council tasked with choosing a new prime minister and Cabinet for Haiti was due to be sworn in.¹⁷ This council was set to be installed more than a month after Caribbean leaders announced its creation in response to the growing crisis in Haiti.¹⁸ The council is also expected to help set the agenda of a new Cabinet.¹⁹ On April 30, 2024, the recently installed transitional council unexpectedly selected Fritz Bélizaire as the new prime minister of Haiti and Edgard Leblanc Fils as the council president.²⁰

Humanitarian Concerns

In its 2024 annual report, Human Rights Watch (HRW) stated that “access to electricity, safe drinking water, sanitation, health care, and education was severely limited” in Haiti throughout 2023.²¹ The World Food Programme (WFP) reported in September 2023 that Haiti is “one of 9 countries facing starvation risks” amid high levels of food insecurity.²² Furthermore, Haiti faces an increasing number of cholera cases following the resurgence of cholera that began in October 2022.²³

The International Organization for Migration (IOM) reported that, as of March 2024, 362,551²⁴ people are internally displaced across Haiti, a significant increase from a prior IOM report, which estimated that nearly 200,000 people were internally displaced as of October 2023.²⁵ According to the October 2023 IOM report, 31,000 people were sleeping in the open outdoors, and 34,000 people were reportedly crammed into classrooms used as shelter.²⁶ IOM also stated that “many families cannot meet their basic needs.” The lack of adequate housing for internally displaced persons is exacerbating already high tensions and “contributing to violence and increasing the risk of sexual assault.”²⁷

In November 2023, the WFP noted that Haiti “has one of the world’s highest levels of chronic food insecurity with over half its total population chronically food insecure and 22 percent chronically malnourished children.”²⁸ In July 2023, the International Crisis Group reported that “around half of all Haitians are now considered food insecure.”²⁹ According to a 2024 BINUH report, this food insecurity is attributable in part to the security crisis, which has led to “dysfunction in the market supply chain.”³⁰ Gangs charge “increasingly

and Red Crescent Societies (IFRC), Nov. 3, 2023, available at <https://reliefweb.int/report/haiti/haiti-earthquake-and-cholera-outbreak-emergency-appeal-no-mdrht018-operation-update-6> (last visited Jan. 25, 2024).

²⁴ Haiti—Internal displacement situation in Haiti—West, South, South-East, Artibonite, Grande Anse, Centre and Nippes, Protection Services, International Organization for Migration (IOM), Mar. 2024, available at <https://dtm.iom.int/reports/haiti-internal-displacement-situation-haiti-west-south-south-east-artibonite-grande-anse-0> (last visited Apr. 16, 2024).

²⁵ As Displacement Soars, Haiti Requires USD 21 Million for Emergency Shelter, Protection Services, International Organization for Migration (IOM), Oct. 10, 2023, available at <https://reliefweb.int/report/haiti/displacement-soars-haiti-requires-usd-21-million-emergency-shelter-protection-services> (last visited Jan. 25, 2024).

²⁶ *Id.*

²⁷ As Displacement Soars, Haiti Requires USD 21 Million for Emergency Shelter, Protection Services, International Organization for Migration (IOM), Oct. 10, 2023, available at <https://reliefweb.int/report/haiti/displacement-soars-haiti-requires-usd-21-million-emergency-shelter-protection-services> (last visited Jan. 25, 2024).

²⁸ Haiti Country Brief, World Food Programme (WFP), Nov. 2023, available at https://docs.wfp.org/api/documents/WFP-0000155417/download/?_ga=2.249432451.544473126.1706236500-581114880.1706236500 (last visited Jan. 25, 2024).

²⁹ Diego Da Rin, Haitians Turn to Mob Justice as the Gang Threat Festers, International Crisis Group, July 3, 2023, available at <https://www.crisisgroup.org/latin-america-caribbean/haiti/haitians-turn-mob-justice-gang-threat-festers> (last visited Jan. 24, 2024).

³⁰ United Nations Integrated Office in Haiti—Report of the Secretary-General, UN Security

office-haiti-report-secretary-general-s202462-enarruzh (last visited Jan. 23, 2024).

⁸ *Id.*

⁹ Final report of the Panel of Experts on Haiti, UN Security Council, Sep. 15, 2023, available at <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s-2023-647.pdf> (last visited Apr. 30, 2024).

¹⁰ United Nations Integrated Office in Haiti—Report of the Secretary-General, UN Security Council, Jan. 15, 2024, available at <https://reliefweb.int/report/haiti/united-nations-integrated-office-haiti-report-secretary-general-s202462-enarruzh> (last visited Jan. 23, 2024).

¹¹ Dánica Coto, Haiti’s prime minister is locked out of his country and faces pressure to resign, The Associated Press, Mar. 8, 2024, available at <https://apnews.com/article/haiti-prime-minister-gangs-resign-e583a191a2f800bc6375220a47dec0d> (last visited Mar. 11, 2024).

¹² Haiti’s top gang leader warns of “civil war that will lead to genocide” unless prime minister steps down, CBS News, Mar. 6, 2024, available at <https://www.cbsnews.com/news/haiti-gang-leader-jimmy-cherizier-warns-civil-war-genocide/> (last visited on Mar. 11, 2024).

¹³ Widlore Mérancourt, Samantha Schmidt, and Amanda Coletta, Haitian prime minister to resign, clearing way for new government, The Washington Post, Mar. 12, 2024, available at <https://www.washingtonpost.com/world/2024/03/12/haitian-prime-minister-resign-clearing-way-new-government/> (last visited on Mar. 12, 2024).

¹⁴ Top UN expert warns of deteriorating situation in Haiti: ‘It’s apocalyptic’, The Guardian, April 2024, available at <https://www.theguardian.com/world/2024/apr/04/un-expert-haiti-gang-violence> (last visited Apr. 16, 2024).

¹⁵ *Id.*

¹⁶ Ariel Henry resigns as prime minister of Haiti, wracked by gang violence, paving the way for new government to take power, PBS, Apr. 25, 2024, available at <https://www.pbs.org/newshour/world/ariel-henry-resigns-as-prime-minister-of-haiti-wracked-by-gang-violence-paving-the-way-for-new-government-to-take-power> (last visited May 13, 2024).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The announcement of a new prime minister divides Haiti’s transitional council, NPR, May 1, 2024, available at <https://www.npr.org/2024/05/01/1248397751/the-announcement-of-a-new-prime-minister-divides-haitis-transitional-council> (last visited May 13, 2024).

²¹ World Report 2024—Haiti, Human Rights Watch, Jan. 11, 2024, available at <https://www.ecoi.net/en/document/2103219.html> (last visited Jan. 25, 2024).

²² Severe hunger persists in Haiti as violence intensifies in the capital, World Food Programme (WFP), Sep. 19, 2023, available at <https://reliefweb.int/report/haiti/severe-hunger-persists-haiti-violence-intensifies-capital> (last visited Jan. 30, 2024).

²³ Haiti | Earthquake and Cholera Outbreak—Emergency Appeal No. MDRHT018—Operation update #6, International Federation of Red Cross

heavy illegal passage fees” to allow vehicles, including trucks transporting food, to transit the main roads in Haiti.³¹ In addition to the problems caused by the security crisis, the food shortages are also partly due to “the confluence of a global rise in food prices, depreciation of the local currency, and restrictions on internal transport,” which “have made food both scarce and unaffordable.”³²

Economic Concerns

According to The World Bank, “Haiti remains the poorest country in the Latin America and the Caribbean (LAC) region, and among the poorest countries in the world.”³³ Haiti’s economy has contracted for five straight years, from 2019 through 2023.³⁴ The World Economic Forum reported in February 2023 that Haiti had the tenth highest inflation in the world, “with year-on-year price increases of 53 percent.”³⁵ Additionally, a survey conducted in March 2023 indicated that around two-thirds of Haitian households have experienced a significant reduction in their income.³⁶ The September 2023 report by the United Nations Panel of Experts noted that “violence and insecurity [in Haiti] not only undermine the political transition, but also decimate the national economy and threaten the future of the country, with many children not going to school and skilled people leaving the country.”³⁷

Council, Jan. 15, 2024, available at <https://reliefweb.int/report/haiti/united-nations-integrated-office-haiti-report-secretary-general-s202462-enarruzh> (last visited Jan. 23, 2024).

³¹ *Id.*

³² Tanvi Nagpal, No Easy Solutions: Understanding the Scale of the Humanitarian Crisis in Haiti, Center for Strategic & International Studies (CSIS), Dec. 12, 2023, <https://www.csis.org/analysis/no-easy-solutions-understanding-scale-humanitarian-crisis-haiti> (last visited Jan. 25, 2024).

³³ The World Bank in Haiti: Overview, The World Bank, Oct. 26, 2023, available at <https://www.worldbank.org/en/country/haiti/overview> (last visited Jan. 25, 2024).

³⁴ Haiti—Recession: Haiti’s economy in free fall, –10.5% of GDP in total over 5 years, Haiti Libre, Jan. 3, 2024, available at <https://www.haitilibre.com/en/news-41354-haiti-recession-haiti-s-economy-in-free-fall105-of-gdp-in-total-over-5-years.html> (last visited Jan. 30, 2024).

³⁵ Johnny Wood, These countries have been the hardest hit by food price inflation, World Economic Forum, Feb. 21, 2023, available at <https://www.weforum.org/agenda/2023/02/countries-hit-by-food-prices-inflation-cost-of-living-crisis/> (last visited Jan. 30, 2024).

³⁶ The World Bank in Haiti: Overview, The World Bank, Oct. 26, 2023, available at <https://www.worldbank.org/en/country/haiti/overview> (last visited Jan. 25, 2024).

³⁷ Final report of the Panel of Experts on Haiti, UN Security Council, Sep. 15, 2023, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/246/28/PDF/N2324628.pdf> (last visited Jan. 24, 2024).

Health Concerns

As of January 2024, there were an estimated 73,000 “confirmed and suspected cases” of cholera in Haiti, “across all 10 departments.”³⁸ The resurgence of cholera began in October 2022, “after more than three years with no reported cases.”³⁹ The World Health Organization stated in September 2023 that “access to clean water remains limited, contributing to the spread of cholera.”⁴⁰ HRW reported in January 2024 that “only 55 percent of Haitian households had access to safe drinking water and two-thirds of the population had limited or no sanitation services, aggravating the spread of cholera” in 2023.⁴¹

The International Federation of Red Cross reported in November 2023 that people in Haiti who contract cholera “face a greater likelihood of severe disease and death” because of “the current socioeconomic situation and complex humanitarian crisis, which includes recent closure of hospitals and reduced ambulance services, as well as overall poor health condition of the population, including acute malnutrition.”⁴²

The United Nations Panel of Experts noted that “Haiti is suffering one of its worst health care crises in its history.”⁴³ The same source reported that “about 48 percent of hospitals in the Port-au-Prince metropolitan area are under gang influence or control, leading to forced closures due to attacks on patients, staff, or facilities.”⁴⁴ Doctors

³⁸ United Nations Integrated Office in Haiti—Report of the Secretary-General, UN Security Council, Jan. 15, 2024, available at <https://reliefweb.int/report/haiti/united-nations-integrated-office-haiti-report-secretary-general-s202462-enarruzh> (last visited Jan. 23, 2024).

³⁹ Cholera—Haiti, World Health Organization (WHO), Dec. 13, 2022, available at <https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON427> (last visited Jan. 24, 2024).

⁴⁰ Haiti Health Cluster, Navigating a Multifaceted Humanitarian Crisis, World Health Organization (WHO), Sep. 5, 2023, available at <https://healthcluster.who.int/newsroom/news/item/05-09-2023-haiti-health-cluster-navigating-a-multifaceted-humanitarian-crisis> (last visited on Jan. 24, 2024).

⁴¹ World Report 2024—Haiti, Human Rights Watch, Jan. 11, 2024, available at <https://www.ecoi.net/en/document/2103219.html> (last visited Jan. 25, 2024).

⁴² Haiti | Earthquake and Cholera Outbreak—Emergency Appeal No. MDRHT018—Operation update #6, International Federation of Red Cross and Red Crescent Societies (IFRC), Nov. 3, 2023, available at <https://reliefweb.int/report/haiti/earthquake-and-cholera-outbreak-emergency-appeal-no-mdrht018-operation-update-6> (last visited Jan. 25, 2024).

⁴³ Final report of the Panel of Experts on Haiti, UN Security Council, Sep. 15, 2023, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/246/28/PDF/N2324628.pdf> (last visited Jan. 24, 2024).

⁴⁴ *Id.*

and nurses have reportedly been “shot, robbed, and kidnapped while on their way to work.”⁴⁵

HRW stated in its 2024 annual report on Haiti (covering the events of 2023) that “international organizations estimate that 75 percent of the country’s health facilities have inadequate medical supplies and insufficient trained personnel,” and that “insecurity has triggered an exodus of health workers from Haiti in recent years.”⁴⁶

As of May 13, 2024, approximately 820 F–1 nonimmigrant students from Haiti are enrolled at SEVP-certified academic institutions in the United States. Given the extent of the current crisis in Haiti, affected students whose primary means of financial support comes from Haiti may need to be exempt from the normal student employment requirements to continue their studies in the United States. The current crisis has made it infeasible for many students to safely return to Haiti for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a “full course of study.” See 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. See 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education

⁴⁵ *Id.*

⁴⁶ World Report 2024—Haiti, Human Rights Watch, Jan. 11, 2024, available at <https://www.ecoi.net/en/document/2103219.html> (last visited Jan. 25, 2024).

toward satisfying this minimum course load requirement, unless their course of study is in an English language study program. *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain “class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,” as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F–1 nonimmigrant student who is a Haitian citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Haiti), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that their designated school official (DSO) enter the following statement in the remarks field of the student’s Student and Exchange Visitor Information System (SEVIS) record, which the student’s Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert “on-campus” or “off-campus,” depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student’s employment, whichever date is later] until [DSO must insert either the student’s program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].⁴⁷

⁴⁷ Because the suspension of requirements under this notice applies throughout an academic term

Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her “full course of study”?

No. DHS will deem an F–1 nonimmigrant student who receives and complies with the employment authorization permitted under this notice to be engaged in a “full course of study”⁴⁸ for the duration of the student’s employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a “full course of study.” *See* 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment while in F–2 nonimmigrant status, consistent with 8 CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study,” *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of February 3, 2026, provided the student satisfies the minimum course load requirements in this notice.

⁴⁸ *See* 8 CFR 214.2(f)(6).

(1) Are a citizen of Haiti regardless of country of birth (or an individual having no nationality who last habitually resided in Haiti);

(2) Were lawfully present in the United States on the date of publication of this notice in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Haiti.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the current crisis in Haiti).

Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student’s SEVIS record, which will then appear on the student’s Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Haiti enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high school. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students from Haiti enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that

limits on-campus employment to 20 hours per week while school is in session.

On-Campus Employment Authorization

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the student's SEVIS record, which will be reflected on the student's Form I–20:

Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].⁴⁹

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current crisis in Haiti. An F–1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time on-campus employment when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F–1 nonimmigrant student status?

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a “full course of study”⁵⁰ for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.⁵¹

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while the school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a “full course of study”⁵² for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). The authorization for a reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.⁵³

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current crisis in Haiti.⁵⁴ Filing instructions are located at <https://www.uscis.gov/i-765>.

Fee considerations. Submission of a Form I–765 currently requires payment of a \$520 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. See <https://www.uscis.gov/i-912>. The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). See 8 CFR 106.2 and 106.3.

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to their DSO:

⁵² See 8 CFR 214.2(f)(6).

⁵³ Minimum course load requirement for enrollment in a school must be established in a publicly available document (e.g., catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

⁵⁴ See 8 CFR 274a.12(c)(3)(iii).

⁴⁹ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study,” see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of February 3, 2026, provided the student satisfies the minimum course load requirements in this notice.

⁵⁰ See 8 CFR 214.2(f)(6).

⁵¹ Minimum course load requirement for enrollment in a school must be established in a publicly available document (e.g., catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

(1) This employment is necessary to avoid severe economic hardship; and
 (2) The hardship is a direct result of the current crisis in Haiti.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].⁵⁵

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a “full course of study”⁵⁶ at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Haiti, regardless of country of birth (or an individual having no nationality who last habitually resided in Haiti), and is experiencing severe economic hardship as a direct result of the current crisis in Haiti, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of

instruction per academic term if the student is at the graduate level;⁵⁷ and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the current crisis in Haiti.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes the following documents:

(1) A completed Form I–765 with all applicable supporting evidence;

(2) The required fee or properly documented fee waiver request as defined in 8 CFR 106.2 and 106.3; and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase “SPECIAL STUDENT RELIEF.”⁵⁸ Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

Temporary Protected Status (TPS) Considerations

Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,⁵⁹ under this notice has two options.

Under the first option, the F–1 nonimmigrant student may apply for TPS according to the instructions in the USCIS notice designating Haiti for TPS elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status, with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a

new TPS-related EAD that is valid through February 3, 2026, and to be eligible for automatic EAD extensions that may be available to certain EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or request a fee waiver). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS and issue an updated Form I–20, which notates that the nonimmigrant student has been authorized to carry a reduced course load, as described in this notice. As long as the F–1 nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the F–1 nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the Form I–821 according to the instructions provided in the **Federal Register** notice designating Haiti for TPS. If the F–1 nonimmigrant student has already applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS-related EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code that are not available to the C–3 category under which Special Student Relief falls. The F–1 nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, as long as the F–1 nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a “full course of

⁵⁵ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study,” see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of February 3, 2026, provided the student satisfies the minimum course load requirements in this notice.

⁵⁶ See 8 CFR 214.2(f)(6).

⁵⁷ 8 CFR 214.2(f)(5)(v).

⁵⁸ Guidance for direct filing addresses can be found here: <https://www.uscis.gov/i-765-addresses>.

⁵⁹ See DHS Study in the States, Special Student Relief, <https://studyinthestates.dhs.gov/students/special-student-relief> (last visited Feb. 28, 2024).

study”⁶⁰ unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (e.g., clock hours for non-traditional academic programs). Once approved for a TPS-related EAD and Special Student Relief employment authorization, as indicated by the DSO’s required entry in SEVIS and issuance of an updated Form I–20, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). See 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current crisis in Haiti. The DSO will then verify and update the student’s record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen’s F–1 nonimmigrant student status has lapsed?

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. See 8 CFR 214.2(f)(16). This provision may apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief until February 3, 2026,⁶¹ to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Haiti. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the current crisis in Haiti must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student’s SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control Number 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional

⁶¹ Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a “full course of study,” see 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of February 3, 2026, provided the student satisfies the minimum course load requirements in this notice.

filings. Accordingly, there is no further action required under the PRA.

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2772–24; DHS Docket No. USCIS–2014–0001]

RIN 1615–ZB70

Extension and Redesignation of Haiti for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension and redesignation.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Haiti for Temporary Protected Status (TPS) and redesignating Haiti for TPS for 18 months, beginning on August 4, 2024, and ending on February 3, 2026. This extension and redesignation allows Haitian nationals (and individuals having no nationality who last habitually resided in Haiti) who have been continuously residing in the United States since June 3, 2024, and who have been continuously physically present in the United States since August 4, 2024, to apply or re-register for TPS.

DATES: *Extension and Redesignation of Designation of Haiti for TPS* begins on August 4, 2024, and will remain in effect for 18 months. For registration instructions, see the Registration Information section below.

FOR FURTHER INFORMATION CONTACT:

- You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 240–721–3000.

- For more information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at <https://www.uscis.gov/tps>.

⁶⁰ See 8 CFR 214.2(f)(6).

You can find specific information about Haiti's TPS designation by selecting "Haiti" from the menu on the left side of the TPS web page.

- If you have additional questions about TPS, please visit <https://uscis.gov/tools>. Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you cannot find your answers there, you may also call our USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

- Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *Agenda*; or visit the USCIS Contact Center at <https://www.uscis.gov/contactcenter>.

- You can also find more information at local USCIS offices after this notice is published.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DoS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I-131—Application for Travel Document
Form I-765—Application for Employment Authorization
Form I-797—Notice of Action
Form I-821—Application for Temporary Protected Status
Form I-9—Employment Eligibility Verification
Form I-912—Request for Fee Waiver
Form I-94—Arrival/Departure Record
FR—**Federal Register**
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
PM—Prime Minister
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Registration Information

Extension of Designation of Haiti for TPS: The 18-month designation of Haiti for TPS begins on August 4, 2024, and will remain in effect for 18 months, ending on February 3, 2026. The extension allows existing TPS beneficiaries to retain TPS through February 3, 2026, if they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their

status through February 3, 2026, must re-register during the 60-day re-registration period described in this notice.

Re-registration: The 60-day re-registration period for existing beneficiaries runs from July 1, 2024, through August 30, 2024. (Note: It is important for re-registrants to timely re-register during the re-registration period and not to wait until their Employment Authorization Documents (EADs) expire, as delaying re-registration could result in gaps in their employment authorization documentation.)

Redesignation of Haiti for TPS: The 18-month redesignation of Haiti for TPS begins on August 4, 2024, and will remain in effect for 18 months, ending on February 3, 2026. The redesignation allows individuals who do not currently have TPS to apply for TPS during the initial registration period described under the first-time registration information in this notice. In addition to demonstrating continuous residence in the United States since June 3, 2024, and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since August 4, 2024, the effective date of this redesignation of Haiti for TPS.

First-time Registration: The initial registration period for new applicants under the Haiti TPS redesignation begins on July 1, 2024 and will remain in effect through February 3, 2026.

Purpose of This Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of Haiti (or individuals having no nationality who last habitually resided in Haiti) to (1) re-register for TPS and apply to renew their EAD with USCIS or (2) submit an initial registration application under the redesignation and apply for an EAD.

Re-registration is limited to individuals who have previously registered for TPS under the prior designation of Haiti and whose applications have been granted. If you do not re-register properly within the 60-day re-registration period, USCIS may withdraw your TPS following appropriate procedures. See 8 CFR 244.14.

For individuals who have already been granted TPS under Haiti's designation, the 60-day re-registration period runs from July 1, 2024, through August 30, 2024. USCIS will issue new EADs with a February 3, 2026 expiration date to eligible beneficiaries granted TPS under Haiti's designation who timely re-register and apply for

EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive a new EAD before their current EAD expires. Accordingly, through this **Federal Register** notice, DHS automatically extends through August 3, 2025, the validity of certain EADs previously issued under the TPS designation of Haiti. As proof of continued employment authorization through August 3, 2025, TPS beneficiaries can show their EAD with the notation A-12 or C-19 under Category and a "Card Expires" date of August 3, 2024, June 30, 2024, February 3, 2023, December 31, 2022, October 4, 2021, January 4, 2021, January 2, 2020, July 22, 2019, January 22, 2018, or July 22, 2017. This notice explains how TPS beneficiaries and their employers may determine if an EAD is automatically extended and how this affects the Form I-9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have an Application for Temporary Protected Status (Form I-821) for Haiti or Application for Employment Authorization (Form I-765) that was still pending as of July 1, 2024, do not need to file either application again. If USCIS approves an individual's pending Form I-821, USCIS will grant the individual TPS through February 3, 2026. Similarly, if USCIS approves a pending TPS-related Form I-765, USCIS will issue the individual a new EAD that will be valid through the same date.

Under the redesignation, individuals who currently do not have TPS may submit an initial application during the initial registration period that runs from July 1, 2024, through the full length of the redesignation period ending February 3, 2026. In addition to demonstrating continuous residence in the United States since June 3, 2024, and meeting other eligibility criteria, initial applicants for TPS under this redesignation must demonstrate that they have been continuously physically present in the United States since August 4, 2024,¹ the effective date of

¹ The "continuous physical presence" date is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or a later date established by the Secretary. The "continuous residence" date is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. See INA sec. 244(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i-ii) (continuous residence and continuous physical presence date requirements); 8 U.S.C. 1254a(b)(2)(A); 1254a(c)(1)(A)(i-ii).

this redesignation of Haiti, before USCIS may grant them TPS. DHS estimates that approximately 309,000 individuals may become newly eligible for TPS under the redesignation of Haiti.

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs if they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
 - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
 - Any other lawfully obtained immigration status or category they received while registered for TPS, if it is still valid beyond the date TPS terminates.

When was Haiti designated for TPS?

Haiti was initially designated on the basis of extraordinary and temporary conditions in Haiti that prevented nationals of Haiti from returning in safety.² Following the initial designation, TPS for Haiti was extended and redesignated once from July 23, 2011, through January 22, 2013, based on extraordinary and temporary conditions.³ Thereafter, TPS for Haiti was extended four times based on extraordinary and temporary conditions: (1) from January 23, 2013, through July 22, 2014;⁴ (2) from July 23, 2014, through January 22, 2016;⁵ (3) from

January 23, 2016, through July 22, 2017;⁶ and (4) from July 23, 2017, through January 22, 2018.⁷ Subsequently, the Secretary announced the termination of the TPS designation of Haiti effective July 22, 2019.⁸

The termination of Haiti's 2011 TPS designation was challenged in several lawsuits, and court injunctions required DHS to temporarily continue TPS for Haiti pending a final court order.⁹ Secretary Mayorkas newly designated Haiti on the basis of extraordinary and temporary conditions effective August 3, 2021, through February 3, 2023.¹⁰ Thereafter, TPS for Haiti was extended and redesignated effective February 4, 2023, and ending on August 3, 2024.¹¹

What authority does the Secretary have to extend the designation of Haiti for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.¹² The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the

designation, termination, or extension of a designation. *See* INA sec. 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A). The Secretary, in their discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA sec. 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA sec. 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA sec. 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA sec. 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

What is the Secretary's authority to redesignate Haiti for TPS?

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* INA sec. 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that "the alien has been continuously physically present since the effective date of the most recent designation of the state") (emphasis added).¹³

When the Secretary designates or redesignates a country for TPS, the Secretary also has the discretion to establish the date from which TPS applicants must demonstrate that they have been "continuously resid[ing]" in the United States. *See* INA sec. 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii). The Secretary has

² *See Designation of Haiti for Temporary Protected Status*, 75 FR 3476 (Jan. 21, 2010).

³ *See Extension and Redesignation of Haiti for Temporary Protected Status*, 76 FR 29000 (May 19, 2011).

⁴ *See Extension of the Designation of Haiti for Temporary Protected Status*, 77 FR 59943 (Oct. 1, 2012).

⁵ *See Extension of the Designation of Haiti for Temporary Protected Status*, 79 FR 11808 (Mar. 3, 2014).

⁶ *See Extension of the Designation of Haiti for Temporary Protected Status*, 80 FR 51582 (Aug. 25, 2015).

⁷ *See Extension of the Designation of Haiti for Temporary Protected Status*, 82 FR 23830 (May 24, 2017).

⁸ *See Termination of the Designation of Haiti for Temporary Protected Status*, 83 FR 2648 (Jan. 18, 2018).

⁹ On Dec. 28, 2023, the U.S. District Court for the Northern District of California dismissed *Ramos v. Nielsen*, 18–cv–01554 (N.D. Cal. Dec. 28, 2023). *Bhattarai v. Nielsen*, 19–cv–731 (N.D. Cal. Mar. 12, 2019) was consolidated with *Ramos* in August 2023. The court agreed with the government position that subsequent TPS designations rendered the pending litigation moot.

¹⁰ *See Designation of Haiti for Temporary Protected Status*, 86 FR 41863 (Aug. 3, 2021).

¹¹ *See Extension and Redesignation of Haiti for Temporary Protected Status*, 88 FR 5022 (Jan. 26, 2023).

¹² INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (2002). The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. INA sec. 244(b)(1); 8 U.S.C. 1254a(b)(1).

¹³ The extension and redesignation of TPS for Haiti is one of several instances in which the Secretary and, before the establishment of DHS, the Attorney General, have simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g., Extension and Redesignation of Haiti for Temporary Protected Status*, 76 FR 29000 (May 19, 2011); *Extension and Re-designation of Temporary Protected Status for Sudan*, 69 FR 60168 (Oct. 7, 2004); *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program*, 62 FR 16608 (Apr. 7, 1997).

determined that the “continuous residence” date for applicants for TPS under the redesignation of Haiti will be June 3, 2024. Initial applicants for TPS under this redesignation must also show they have been “continuously physically present” in the United States since August 4, 2024, which is the effective date of the Secretary’s redesignation of Haiti. *See* INA sec. 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, USCIS cannot make the final determination of whether the applicant has met the “continuous physical presence” requirement until August 4, 2024, the effective date of this redesignation for Haiti.

USCIS, however, will issue employment authorization documentation, as appropriate, during the registration period in accordance with 8 CFR 244.5(b).

Why is the Secretary extending the TPS designation for Haiti and simultaneously redesignating Haiti for TPS through February 3, 2026?

DHS has reviewed country conditions in Haiti. Based on the review, including input received from Department of State (DoS) and other U.S. Government agencies, the Secretary has determined that an 18-month TPS extension is warranted because the extraordinary and temporary conditions supporting Haiti’s TPS designation remain. The Secretary has further determined that redesignating Haiti for TPS under INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C) is warranted and is changing the continuous residence and continuous physical presence dates that applicants must meet to be eligible for TPS.

Overview

DHS has conducted a thorough review of country conditions in Haiti. Haiti continues to experience simultaneous economic, security, political, and health crises. Haitian gangs are the primary source of violence and instability in Haiti and pose an increasing threat as they continue to escalate and expand their influence and geographic presence over large portions of metropolitan Port-au-Prince, Haiti’s capital, as well as to several of Haiti’s ten departments (regional administrative divisions).¹⁴

¹⁴ Edith M. Lederer, Gang violence in Haiti is escalating and spreading with a significant increase in killings, UN says, *The Associated Press*, Sept. 27, 2023, available at: <https://apnews.com/article/haiti-gang-violence-un-report-killings-5d3f7ff272b7303852869dfc67692a23> (last visited Apr. 29, 2024); Haiti: Humanitarian impact of gang violence, ACAPS, June 2, 2023, available at: <https://reliefweb.int/report/haiti/acaps-briefing-note-haiti-humanitarian-impact-gang-violence-02-june-2023> (last visited Apr. 29, 2024).

Since early March 2024, the gangs have also attacked the capital’s primary airport and major port terminals, and blocked roads to access the city.¹⁵ An ongoing political impasse has left Haiti without a functioning democratically elected national government and hindered Haiti’s ability to respond to the gang-driven violence. The political situation has continued to worsen since the July 2021 assassination of President Jovenel Moïse.¹⁶ At the same time, Haiti struggles through a humanitarian crisis, with many citizens having limited access to safety, healthcare, food, water, and economic opportunity. These circumstances continue to make return to Haiti dangerous for Haitian nationals living in the United States.

Political Situation

On July 7, 2021, President Jovenel Moïse was assassinated in his private residence in Port-au-Prince. Subsequently, Ariel Henry, whom Moïse had appointed prime minister (PM) days before the assassination, assumed power as head of a new government.¹⁷ In the wake of the assassination, there were ongoing efforts to create a transitional government and eventually hold free and fair elections, but talks repeatedly failed, with some opposition groups demanding the resignation of PM Henry as a precondition for dialogue.¹⁸ On December 21, 2022, representatives of civil society organizations, the private sector, and political groups created a political accord called the “National consensus for an inclusive transition and transparent elections,” which was supported by PM Henry.¹⁹ While dialogue to define a strategic direction

reliefweb.int/report/haiti/acaps-briefing-note-haiti-humanitarian-impact-gang-violence-02-june-2023 (last visited Apr. 29, 2024).

¹⁵ Widlore Mérancourt and Samantha Schmidt, As gangs attack a critical port, ‘Haiti will go hungry soon’, *The Washington Post*, Mar. 7, 2024, available at: <https://www.washingtonpost.com/world/2024/03/07/haiti-gangs-port/> (last visited Apr. 29, 2024).

¹⁶ Clare Ribando Seelke and Karla I. Rios, Haiti: Recent Developments and U.S. Policy, Congressional Research Service (CRS), Sept. 18, 2023, available at: <https://sgp.fas.org/crs/row/R47394.pdf> (last visited Apr. 29, 2024).

¹⁷ Human Rights Watch, *World Report 2022—Haiti* (Jan. 13, 2022), <https://www.hrw.org/world-report/2022/country-chapters/haiti> (last visited Apr. 29, 2024).

¹⁸ United Nations Integrated Office in Haiti (BINUH)—Report of the Secretary-General, UN Security Council, p. 2, Jan. 15, 2024, available at: <https://reliefweb.int/report/haiti/united-nations-integrated-office-haiti-report-secretary-general-s202462-enarruzh> (last visited Feb. 26, 2024).

¹⁹ Haiti Libre, Haiti—FLASH: The PM signed a historic consensus for an inclusive transition, Dec. 22, 2022, <https://www.haitilibre.com/en/news-38427-haiti-flash-the-pm-signed-a-historic-consensus-for-an-inclusive-transition.html> (last visited Apr. 29, 2024).

for holding elections continued, frustration has grown at the failure to hold elections over the last three years.²⁰ The last national elections in Haiti were held in November 2016. Since then, the terms of 30 senators and 119 members of Haiti’s lower legislative chamber have expired, leaving Haiti without an active national legislative body since January 2023.²¹

Beginning in mid-January 2024, significant protests erupted throughout Haiti, paralyzing numerous cities.²² The protests were driven by supporters of Guy Philippe, the leader of a 2004 rebellion against former President Jean-Bertrand Aristide in which he masterminded multiple attacks on police stations.²³ Since returning to Haiti from the United States, Philippe has spent his time “shoring up support for his so-called revolution.”²⁴ Philippe is believed by some to be a destabilizing force in Haiti and the protests have led to the closing of schools, government agencies, and private businesses in cities throughout Haiti.²⁵

PM Henry traveled abroad at the beginning of 2024 for international engagements. During his travel, a series of coordinated gang attacks began against targets in Haiti’s capital and beyond, freeing thousands of inmates and closing the main international airport.²⁶ PM Henry has been unable to

²⁰ Final report of the Panel of Experts on Haiti, UN Security Council, p. 8, Sept. 15, 2023, available at: <https://www.securitycouncilreport.org/un-documents/document/s-2023-674.php> (last visited Apr. 29, 2024).

²¹ Becky Sullivan, As its only remaining elected officials depart, Haiti reaches a breaking point, *National Public Radio (NPR)*, Jan. 18, 2023, available at: <https://www.npr.org/2023/01/18/1149556481/haiti-last-elected-official-political-crisis> (last visited Apr. 29, 2024); *see also* Camila Domonoske, 14 Months After Elections Began, Haiti Finally Has a President-Elect, *National Public Radio (NPR)*, Jan. 4, 2017, available at: <https://www.npr.org/sections/thetwo-way/2017/01/04/508171191/14-months-after-elections-began-haiti-finally-has-a-president-elect> (last visited Apr. 29, 2024).

²² Supporters of former Haitian rebel leader Guy Philippe launch widespread protests, *The Associated Press*, Jan. 16, 2024, available at: <https://apnews.com/article/haiti-protests-guy-philippe-supporters-d0e749d75b96aee0f01395a580a6dec0> (last visited Apr. 29, 2024).

²³ *Id.*

²⁴ Frances Robles, An Unlikely New Threat to Haiti’s Stability: An Armed Environmental Group, *The New York Times*, Jan. 25, 2024, available at: <https://web.archive.org/web/20240126040146/https://www.nytimes.com/2024/01/25/world/americas/haiti-political-instability-bsap.html> (last visited Apr. 29, 2024).

²⁵ Supporters of former Haitian rebel leader Guy Philippe launch widespread protests, *The Associated Press*, Jan. 16, 2024, available at: <https://apnews.com/article/haiti-protests-guy-philippe-supporters-d0e749d75b96aee0f01395a580a6dec0> (last visited Apr. 29, 2024).

²⁶ Dánica Coto, Haiti’s prime minister is locked out of his country and faces pressure to resign, *The*

Continued

return to Haiti. On March 6, 2024, Jimmy “Barbecue” Cherizier, the leader of one of Haiti’s most powerful gang alliances, the G9, warned that unless PM Henry stepped down, there would be civil war in Haiti.²⁷ In March 2024, Caribbean Community (CARICOM) leaders, with agreement from key Haitian stakeholders, announced that PM Henry would resign once a transitional presidential council was established and an interim leader was selected.²⁸ PM Henry resigned in late April 2024, the day before the swearing in of a 9-member transitional presidential council.²⁹ The council is tasked with, among other duties, selecting an interim prime minister, setting the agenda of a new Cabinet, appointing a provisional electoral commission, and establishing a national security council.³⁰

The Haitian government has long been accused of corruption and ineptitude. “Politicians and the business elite in Haiti have historically relied on gangs to obtain and exert power, but the [gangs] have grown more autonomous in recent years.”³¹ An April 2021 report by Harvard Law School’s International Human Rights

Clinic alleged that the Moïse government funneled money, weapons, uniforms, and vehicles to gangs like the G9 in exchange for them repressing political opponents, often brutally, and maintaining the peace in poorer neighborhoods.³² A July 2022 International Crisis Group report stated, “[C]ollusion between state security forces and illegal armed groups has flourished in the absence of political will to hold corrupt officers accountable and because of the efforts of those in power to deploy the police (as well as gangs) to serve their personal interests.”³³

Allegations of corruption against members of Haiti’s government are prevalent and its “justice system is plagued by insecurity, corruption, strikes, and political interference.”³⁴ A judge has accused more than 30 high-ranking officials, including former presidents and prime ministers, of government corruption and warrants have been issued for their arrest.³⁵ As of January 2024, none of the accused had been arrested.³⁶ Haitian government officials accused of criminal misconduct commonly ignore arrest warrants and requests for questioning.³⁷

Security Situation

Since President Moïse’s assassination, Haiti has experienced a sharp deterioration in an already fragile security situation. Gang violence and kidnappings have spiked throughout the country, particularly in Port-au-Prince. In the first three months of 2024, gang violence killed or injured more than 2,500 people.³⁸ The violence heavily

affects three of Haiti’s ten departments, with gangs having an established presence in at least six departments.³⁹ Gang violence continues to escalate and expand outside the capital and other major cities including Gonaïves and Cap-Haïtien. The Ouest Department, where Port-au-Prince is located, suffers from extreme insecurity from armed gang violence against civilians, police, and infrastructure alike.⁴⁰

Neighborhoods in Port-au-Prince that were previously relatively safe from the gangs have recently seen an alarming expansion of gang influence, including in Carrefour-Feuilles, Solino, Bon Repos, Mariani, and Léogâne.⁴¹ A September 2023 final report from a panel of experts from the United Nations found that gangs controlled or influenced over 80 percent of the Port-au-Prince metropolitan area, while they committed incursions in the remaining 20 percent in which they carried out murders, kidnappings, robberies, and various other crimes.⁴² In early March 2024, gangs attacked police stations and stormed two prisons in and around Port-au-Prince, allowing more than 4,700 inmates to escape.⁴³ Haiti’s government declared a 72-hour state of emergency.⁴⁴ Following the initial attacks, the gangs blocked the roads leading to Port-au-Prince and attacked the city’s main airport.⁴⁵ On March 6, the gangs attacked the primary port terminal, forcing the terminal to close indefinitely, threatening Haiti’s food supply and cutting off deliveries of

Associated Press, Mar. 8, 2024, available at: <https://apnews.com/article/haiti-prime-minister-gangs-resign-e583a191a2f800bc63752220a47dec0d> (last visited Apr. 29, 2024).

²⁷ Haiti’s top gang leader warns of “civil war that will lead to genocide” unless prime minister steps down, CBS News, Mar. 6, 2024, available at: <https://www.cbsnews.com/news/haiti-gang-leader-jimmy-cherizier-warns-civil-war-genocide/> (last visited Apr. 29, 2024).

²⁸ Widlore Mérancourt, Samantha Schmidt, and Amanda Coletta, Haitian prime minister says he’ll resign, clearing way for new government, The Washington Post, Mar. 12, 2024, available at: <https://www.washingtonpost.com/world/2024/03/12/haitian-prime-minister-resign-clearing-way-new-government/> (last visited Apr. 29, 2024).

²⁹ Dánica Coto, Ariel Henry resigns as prime minister of Haiti, wracked by gang violence, paving the way for new government to take power, PBS News Hour, Apr. 25, 2024, available at: <https://www.pbs.org/newshour/world/ariel-henry-resigns-as-prime-minister-of-haiti-wracked-by-gang-violence-paving-the-way-for-new-government-to-take-power> (last visited May 13, 2024); Dánica Coto, Haiti’s new transitional council faces urgent demands for solutions amid gang violence, PBS News Hour, Apr. 26, 2024, available at: <https://www.pbs.org/newshour/world/haitis-new-transitional-council-faces-urgent-demands-for-solutions-amid-gang-violence> (last visited May 13, 2024).

³⁰ Dánica Coto, Haiti’s new transitional council faces urgent demands for solutions amid gang violence, PBS News Hour, Apr. 26, 2024, available at: <https://www.pbs.org/newshour/world/haitis-new-transitional-council-faces-urgent-demands-for-solutions-amid-gang-violence> (last visited May 13, 2024).

³¹ Diego Da Rin, *New Gang Battle Lines Scar Haiti as Political Deadlock Persists*, International Crisis Group (July 27, 2022), <https://www.crisisgroup.org/latin-america-caribbean/haiti/new-gang-battle-lines-scar-haiti-political-deadlock-persists> (last visited Apr. 29, 2024).

³² Harvard Law School International Human Rights Clinic, *Killing with Impunity: State-Sanctioned Massacres in Haiti* (April 2021), http://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf (last visited Apr. 29, 2024).

³³ Diego Da Rin, *New Gang Battle Lines Scar Haiti as Political Deadlock Persists*, International Crisis Group (July 27, 2022), <https://www.crisisgroup.org/latin-america-caribbean/haiti/new-gang-battle-lines-scar-haiti-political-deadlock-persists> (last visited Apr. 29, 2024).

³⁴ World Report 2024—Haiti, Human Rights Watch, Jan. 11, 2024, available at: <https://www.hrw.org/en/document/2103219> (last visited Apr. 29, 2024).

³⁵ Judge in Haiti issues arrest warrants accusing former presidents and prime ministers of corruption, The Associated Press, Jan. 8, 2024, available at: <https://apnews.com/article/haiti-corruption-arrest-warrant-presidents-prime-ministers-1e2c1d0530cbca235e33ada3009acabf> (last visited Apr. 29, 2024).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Sarah Morland, Haiti’s death toll rises as international support lags, UN report says, Reuters, Apr. 19, 2024, available at: <https://www.reuters.com/world/americas/haitis-death-toll-rises-international-support-lags-un-report-says-2024-04-19/> (last visited May 13, 2024).

³⁹ Haiti: Humanitarian impact of gang violence, ACAPS, June 2, 2023, available at: <https://reliefweb.int/report/haiti/acaps-briefing-note-haiti-humanitarian-impact-gang-violence-02-june-2023> (last visited Apr. 29, 2024).

⁴⁰ United Nations Integrated Office in Haiti (BINUH)—Report of the Secretary-General, UN Security Council, p.3, Jan. 15, 2024, available at: <https://reliefweb.int/report/haiti/united-nations-integrated-office-haiti-report-secretary-general-s202462-enarruzh> (last visited Apr. 29, 2024).

⁴¹ *Id.*

⁴² Final report of the Panel of Experts on Haiti, UN Security Council, p.14, Sept. 15, 2023, available at: <https://www.securitycouncilreport.org/un-documents/document/s-2023-674.php> (last visited Apr. 29, 2024).

⁴³ Gangs in Haiti try to seize control of main airport as thousands escape prisons: “Massacring people indiscriminately,” CBS News, Mar. 5, 2024, available at: <https://www.cbsnews.com/news/haiti-gangs-try-to-seize-airport-thousands-inmates-escape-prisons-state-of-emergency/> (last visited Apr. 29, 2024).

⁴⁴ Henri Astier and Gianluca Avagnina, Haiti violence: Haiti gangs demand PM resign after mass jailbreak, BBC, March 4, 2024, available at: <https://www.bbc.com/news/world-latin-america-68462851> (last visited Apr. 29, 2024).

⁴⁵ Widlore Mérancourt and Samantha Schmidt, As gangs attack a critical port, ‘Haiti will go hungry soon’, The Washington Post, Mar. 7, 2024, available at: <https://www.washingtonpost.com/world/2024/03/07/haiti-gangs-port/> (last visited Apr. 29, 2024).

medical supplies.⁴⁶ In response, the Haitian government extended the state of emergency until April 3 in Port-au-Prince and Haiti's Ouest Department.⁴⁷ Due to the escalating violence in neighborhoods surrounding the U.S. Embassy in Haiti and the attack on the airport, the U.S. military evacuated all non-essential Embassy personnel by airlift on Saturday, March 9, and Sunday, March 10.⁴⁸ The coordinated gang attacks that began on February 29 have displaced over 15,000 people from their homes in Port-au-Prince.⁴⁹

There are approximately 200 groups associated with seven major gang coalitions across Haiti, and the majority of armed groups operate in metropolitan Port-au-Prince.⁵⁰ "Many of Haiti's gangs have coalesced around two main alliances:" the G9 and the GPép.⁵¹ "Gangs have decapitated opponents in public, burnt corpses on the street, set fire to houses and used sexual violence to intimidate residents out of collaborating with their rivals."⁵² Many of these groups employ heavy armaments in their activities, and they frequently use handguns and assault weapons.⁵³

Reported homicides increased significantly in 2023, by 119.4 percent from 2022, while reported kidnappings also increased significantly in 2023, by

83 percent from 2022.⁵⁴ Since the start of 2024, gangs have launched assaults against entire neighborhoods in Port-au-Prince. Automatic gunfire and burning barricades trapped residents of the Solino neighborhood in their homes in mid-January 2024.⁵⁵ The Solino neighborhood, home to many police officers, is regarded as a gateway to access other neighborhoods such as Canapé Vert that have remained relatively safe to this point.⁵⁶ Similar attacks began in the Gabelliste neighborhood in early January 2024.⁵⁷ Armed attacks in the neighborhoods of Carrefour, Cité Soleil, and Tabarre that began on February 5 have displaced almost 10,000 people from those areas.⁵⁸

In response to the gang violence and escalating insecurity plaguing much of Haiti, as well as the lack of prosecutions and convictions relating to the violence leading to a sense of impunity, a movement known as *Bwa Kale* began in April 2023.⁵⁹ This movement is driven by anti-gang vigilantes who have armed themselves with improvised weapons and hunted down and killed suspected gang members, often burning their bodies in the aftermath.⁶⁰

Vigilante groups had been active in Haiti prior to April 2023, but a rumored large-scale attack to be carried out by gang members in Port-au-Prince led to a major incident involving vigilantes. Police intercepted a mini-bus of

suspected gang members carrying weapons in the Canapé Vert neighborhood of Port-au-Prince.⁶¹ A large crowd surrounded the mini-bus, pelting the suspected gang members with stones and setting several of them on fire while they were still alive.⁶² Thirteen people were killed.⁶³ Footage of the attack spread widely on social media and inspired additional attacks.⁶⁴ Lynchings were reported in Port-au-Prince in the following days.⁶⁵ Increasing numbers of people joined vigilante groups to defend themselves and their neighborhoods from gang attacks.⁶⁶ In April 2023 alone, 164 cases of mob killings and lynchings of suspected gang members were reported.⁶⁷

Reports suggest collaboration between some vigilante groups and Haitian security forces, and that current or former Haitian police officers have participated in the vigilante violence.⁶⁸ At times, they may have also shared their weapons with the vigilante groups.⁶⁹ In response, the gangs have mounted their own movement to retaliate against the vigilante groups, called *Zam Pale*.⁷⁰ The offensive by the various vigilante groups lasted only a few months before gangs resumed their push into new territory. However, some vigilante groups remain active.⁷¹

Haitian law enforcement has been unable to cope with the level of gang violence due to a failure to expand the size of the Haitian National Police or sufficiently improve its operational capabilities.⁷² The gangs, meanwhile, have expanded their arsenals and upgraded their firepower, hindering the

⁴⁶ *Id.*

⁴⁷ Harold Isaac and Sarah Morland, Haiti healthcare near collapse, says UN, as state of emergency extended, Reuters, Mar. 8, 2024, available at: <https://www.reuters.com/world/americas/haiti-extends-state-emergency-pm-absent-2024-03-07/> (last visited Apr. 29, 2024).

⁴⁸ Emily Mae Czachor, U.S. military airlifts embassy staff from Port-au-Prince amid Haiti's escalating gang violence, CBS News, Mar. 11, 2024, available at: <https://www.cbsnews.com/news/us-military-airlifts-evacuation-staff-embassy-port-au-prince-haiti-gang-violence/> (last visited Apr. 29, 2024).

⁴⁹ Evans Sanon and Dánica Coto, Violence is battering Haiti's fragile economy and causing food and water shortages, The Associated Press, Mar. 9, 2024, available at: <https://apnews.com/article/haiti-violence-gangs-food-economy-092a20f037b48a8e1837a4e6424cf571> (last visited Apr. 29, 2024).

⁵⁰ United Nations Integrated Office in Haiti (BINUH)—Report of the Secretary-General, UN Security Council, p.6, Apr. 14, 2023, available at: https://binuh.unmissions.org/sites/default/files/sg_report_on_binuh_14_april_2023.pdf (last visited Apr. 29, 2024).

⁵¹ Diego Da Rin, *New Gang Battle Lines Scar Haiti as Political Deadlock Persists*, International Crisis Group (July 27, 2022), <https://www.crisisgroup.org/latin-america-caribbean/haiti/new-gang-battle-lines-scar-haiti-political-deadlock-persists> (last visited Apr. 29, 2024).

⁵² *Id.*

⁵³ United Nations Integrated Office in Haiti (BINUH)—Report of the Secretary-General, UN Security Council, p.6, Apr. 14, 2023, available at: https://binuh.unmissions.org/sites/default/files/sg_report_on_binuh_14_april_2023.pdf (last visited Apr. 29, 2024).

⁵⁴ *Id.* at p.3.

⁵⁵ Haiti: residents trapped as armed gangs target key pocket of Port-au-Prince, The Guardian, Jan. 18, 2024, available at: <https://www.theguardian.com/world/2024/jan/18/haiti-residents-trapped-port-au-prince-gangs> (last visited Apr. 29, 2024).

⁵⁶ It's very scary now: Fear grips Haiti's Port-au-Prince amid gang violence, Al Jazeera, Jan. 19, 2024, available at: <https://www.aljazeera.com/gallery/2024/1/19/fear-grips-haitis-port-au-prince-amid-gang-violence> (last visited Apr. 29, 2024).

⁵⁷ United Nations—International Organization for Migration, Haiti—Emergency Tracking Tool—Dashboard #34, Displacement following attacks in Solino and Gabelliste—Municipality of Port-au-Prince, (Jan. 18, 2024), <https://dtm.iom.int/reports/haiti-emergency-tracking-tool-34-displacement-following-attacks-solino-and-gabelliste> (last visited Apr. 29, 2024).

⁵⁸ United Nations—International Organization for Migration, Haiti—Emergency Tracking Tool—Dashboard #37.1, Updates on displacement following attacks in Carrefour, Cité Soleil and Tabarre (Feb. 13, 2024), <https://dtm.iom.int/reports/haiti-emergency-tracking-tool-371-updates-displacement-following-attacks-carrefour-cite-soleil-and-tabarre> (last visited Apr. 29, 2024).

⁵⁹ Final report of the Panel of Experts on Haiti, UN Security Council, p. 3, Sept. 15, 2023, available at: <https://www.securitycouncilreport.org/un-documents/document/s-2023-674.php> (last visited Apr. 29, 2024).

⁶⁰ *Id.*; Henry Shuldiner, Haiti's Anti-Gang Vigilantes May Pose Future Criminal Threat, InSight Crime, May 9, 2023, available at: <https://insightcrime.org/news/bwa-kale-vigilante-movement-challenging-haitis-gangs/> (last visited Apr. 29, 2024).

⁶¹ Diego Da Rin, Haitians Turn to Mob Justice as the Gang Threat Festers, International Crisis Group, Jul. 3, 2023, available at: <https://www.crisisgroup.org/latin-america-caribbean/haiti/haitians-turn-mob-justice-gang-threat-festers> (last visited Apr. 29, 2024).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Final report of the Panel of Experts on Haiti, UN Security Council, p. 17, Sept. 15, 2023, available at: <https://www.securitycouncilreport.org/un-documents/document/s-2023-674.php> (last visited Apr. 29, 2024).

⁷¹ Haiti's Gangs: Can a Foreign Mission Break Their Stranglehold?, International Crisis Group, Jan. 5, 2024, available at: <https://www.crisisgroup.org/latin-america-caribbean/haiti/b49-haitis-gangs-can-foreign-mission-break-their-stranglehold> (last visited Apr. 29, 2024).

⁷² Diego Da Rin, Haitians Turn to Mob Justice as the Gang Threat Festers, International Crisis Group, Jul. 3, 2023, available at: <https://www.crisisgroup.org/latin-america-caribbean/haiti/haitians-turn-mob-justice-gang-threat-festers> (last visited Apr. 29, 2024).

Haitian National Police's ability to effectively fight them.⁷³ According to remarks delivered in April 2023 by the UN Special Representative of the Secretary-General for Haiti, María Isabel Salvador, the Haitian National Police are down from 14,772 personnel to about 13,200 personnel of whom only approximately 9,000 are police officers. However, only 3,500 police officers are on active duty throughout the entire country at any one time.⁷⁴ In just the first half of 2023, gang members attacked multiple police stations, murdered 29 police officers, and posted grisly pictures of the deceased on social media.⁷⁵

Haiti's government requested international help in late 2022 to aid the Haitian National Police in combatting gang violence.⁷⁶ A Multinational Security Support (MSS) mission was authorized by the United Nations Security Council in United Nations Security Council Resolution 2699.⁷⁷ The mandate for the MSS mission is to provide operational support to the Haitian National Police, including through capacity building, and to support the Haitian National Police in providing security for critical infrastructure.⁷⁸ However, to date, the multinational armed force has not deployed to Haiti.⁷⁹

⁷³ Final report of the Panel of Experts on Haiti, UN Security Council, p. 3, Sept. 15, 2023, available at: <https://www.securitycouncilreport.org/un-documents/document/s-2023-674.php> (last visited Apr. 29, 2024).

⁷⁴ María Isabel Salvador (BINUH) on the question concerning Haiti—Security Council, 9311th meeting (Apr. 26, 2023), available at: <https://webtv.un.org/en/asset/k1d/k1dtg6n2jc> (last visited Apr. 29, 2024).

⁷⁵ Diego Da Rin, Haitians Turn to Mob Justice as the Gang Threat Festers, International Crisis Group, Jul. 3, 2023, available at: <https://www.crisisgroup.org/latin-america-caribbean/haiti/haitians-turn-mob-justice-gang-threat-festers> (last visited Apr. 29, 2024).

⁷⁶ Reuters, Explainer: Why did the UN vote to send an international force to Haiti? (Oct. 2, 2023), available at: <https://www.reuters.com/world/americas/why-did-un-vote-send-an-international-force-haiti-2023-10-02/> (last visited Apr. 29, 2024).

⁷⁷ United Nations Security Council, Resolution 2699, Oct. 2, 2023, available at: <https://digitallibrary.un.org/record/4022890?ln=en&v=pdf> (last visited Apr. 29, 2024).

⁷⁸ Ambassador Robert Wood, Remarks at a UN Security Council Briefing on Haiti, United States Mission to the United Nations, Apr. 22, 2024, available at: <https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-haiti-11/#:~:text=This%20mission%20seeks%20to%20build, and%20communities%20to%20build%20trust.> (last visited Apr. 29, 2024).

⁷⁹ What's going on with the planned international mission to Haiti?, Reuters, Apr. 26, 2024, available at: <https://www.reuters.com/world/americas/haitis-prime-minister-called-international-security-support-who-answered-2024-03-05/> (last visited Apr. 29, 2024).

Environmental Situation

Several recent environmental disasters have contributed to the extraordinary and temporary conditions in Haiti. On August 14, 2021, a 7.2 magnitude earthquake hit the southern region of Haiti, killing more than 2,200 people, injuring 12,700 people, destroying 130,000 homes, and leaving thousands of people in immediate need of aid.⁸⁰ Only a few days later, Tropical Storm Grace resulted in floods and landslides in the same departments affected by the earthquake, in addition to Sud-Est.⁸¹ Some healthcare facilities have still not been rebuilt since the August 2021 earthquake.⁸² Worldwide, “Haiti remains one of the most vulnerable countries” to natural disasters, predominately including hurricanes, floods, and earthquakes.⁸³ Over 96 percent of Haitians are vulnerable to these disasters.⁸⁴ Widespread deforestation has left the country especially prone to flooding and mudslides, and Haiti being situated on a geographical fault line makes it more susceptible to natural disasters in general as compared to the majority of other Caribbean countries.⁸⁵ In 2023, smaller but still significant storms and flooding destroyed over 13,000 homes and cut off roads between communities.⁸⁶ In June 2023, a 4.4 magnitude earthquake and 5.5

⁸⁰ UNICEF, *Massive earthquake leaves devastation in Haiti* (last updated Oct. 4, 2021), <https://www.unicef.org/emergencies/massive-earthquake-devastation-haiti> (last visited Apr. 29, 2024).

⁸¹ FAO, *Haiti: Urgent call for funding (September 2021–May 2022)—Emergency response to households affected by the earthquake and Tropical Storm Grace* (Sept. 10, 2021), <https://reliefweb.int/report/haiti/haiti-urgent-call-funding-september-2021-may-2022-emergency-response-households> (last visited Apr. 29, 2024).

⁸² Luke Taylor, ‘We have no time to heal’: floods followed by earthquake heap more trauma on Haiti, The Guardian, available at: <https://www.theguardian.com/global-development/2023/jul/11/we-have-no-time-to-heal-floods-followed-by-earthquake-heap-more-trauma-on-haiti> (last visited Apr. 29, 2024).

⁸³ The World Bank in Haiti, The World Bank, Oct. 26, 2023, available at: <https://www.worldbank.org/en/country/haiti/overview> (last visited Apr. 29, 2024).

⁸⁴ The World Bank in Haiti, The World Bank, Oct. 26, 2023, available at: <https://www.worldbank.org/en/country/haiti/overview> (last visited Apr. 29, 2024).

⁸⁵ Council on Foreign Relations, *Haiti's Troubled Path to Development* (Sept. 17, 2021), <https://www.cfr.org/background/haitis-troubled-path-development> (last visited Apr. 29, 2024).

⁸⁶ Haiti—Severe weather, floods and landslides, European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, Jun. 6, 2023, available at: <https://reliefweb.int/report/haiti/haiti-severe-weather-floods-and-landslides-haiti-civil-protection-noaa-cpc-echo-daily-flash-06-june-2023> (last visited Apr. 29, 2024).

magnitude earthquake hit Haiti's west coast only two days apart causing the deaths of at least four people while destroying homes, blocking roads, and overwhelming healthcare facilities.⁸⁷

Humanitarian Situation

Haiti has one of the highest levels of chronic food insecurity in the world with more than half of its total population chronically food insecure and 22 percent of children chronically malnourished, according to the World Food Programme.⁸⁸ As of September 2023, the total number of people in acute food insecurity stood at 4.35 million people, including 1.4 million people in the “emergency” phase on the World Food Program's (WFP) Integrated Food Security Classification Index.⁸⁹

A 2024 BINUH report found that the security crisis has led to disruptions in the market supply chain, contributing to the high level of food insecurity.⁹⁰ Gangs that control the main roads between cities and departments charge increasingly high fees to allow vehicles transporting food, as well as other goods, to pass unharmed.⁹¹ The global rise in food prices, depreciation of the Haitian currency, and other restrictions on internal movement of goods in Haiti have, along with the security crisis, contributed to the high food prices and general shortage of food.⁹²

The Pan-American Health Organization and the Haitian government reported a new cholera

⁸⁷ Luke Taylor, ‘We have no time to heal’: floods followed by earthquake heap more trauma on Haiti, The Guardian, available at: <https://www.theguardian.com/global-development/2023/jul/11/we-have-no-time-to-heal-floods-followed-by-earthquake-heap-more-trauma-on-haiti> (last visited Apr. 29, 2024). UN, Haiti: UN deeply saddened as latest earthquake kills three, in wake of floods, available at: <https://news.un.org/en/story/2023/06/1137407> (last visited Apr. 29, 2024).

⁸⁸ Haiti Country Brief, World Food Programme (WFP), Nov. 2023, available at: https://docs.wfp.org/api/documents/WFP-0000155417/download/?_ga=2.249432451.544473126.1706236500-581114880.1706236500 (last visited Apr. 29, 2024).

⁸⁹ Haiti Country Brief, World Food Programme (WFP), Nov. 2023, available at: https://docs.wfp.org/api/documents/WFP-0000155417/download/?_ga=2.249432451.544473126.1706236500-581114880.1706236500 (last visited Apr. 29, 2024).

⁹⁰ United Nations Integrated Office in Haiti—Report of the Secretary-General, UN Security Council, p.12, Jan. 15, 2024, available at: <https://reliefweb.int/report/haiti/united-nations-integrated-office-haiti-report-secretary-general-s202462-enaruzh> (last visited Apr. 29, 2024).

⁹¹ *Id.*

⁹² Tanvi Nagpal, No Easy Solutions: Understanding the Scale of the Humanitarian Crisis in Haiti, Center for Strategic & International Studies (CSIS), Dec. 12, 2023, <https://www.csis.org/analysis/no-easy-solutions-understanding-scale-humanitarian-crisis-haiti> (last visited Apr. 29, 2024).

outbreak in October 2022.⁹³ As of November 15, 2022 there had been 8,146 hospitalized suspected cases and 821 confirmed cases of cholera, resulting in 188 deaths.⁹⁴ As of September 2023, the World Health Organization found that a continued lack of access to clean water sources contributed to the spread of the disease.⁹⁵ As of January 2024, an estimated 73,000 Haitians were confirmed or suspected to have cholera across all 10 departments of Haiti.⁹⁶ Human Rights Watch also estimated that as of January 2024, only 55 percent of Haitian households could access safe drinking water while two-thirds of Haitians had limited or no access to sanitation services.⁹⁷ The recent closure of some hospitals and reduced availability of ambulance services, in addition to the generally poor health condition of the entire population (due, at least in part, to significant malnutrition), has led to more significant likelihood of severe disease and death for those Haitians who contract cholera.⁹⁸

Haiti lacks the healthcare resources to effectively respond to the cholera outbreak. Gangs control or have influence over almost half of all hospitals in the Port-au-Prince metropolitan area, with attacks on patients, staff, and facilities forcing some to close.⁹⁹ Shootings, robberies,

and kidnappings of doctors and nurses have been reported.¹⁰⁰ For example, in a June 2023 attack on a hospital in Ouest department, six hospital security personnel were kidnapped and “vehicles, a generator, solar panels, and various medical supplies and equipment” were stolen.¹⁰¹ After an attack on a convoy of ambulances for Medecins Sans Frontiers (MSF) in December 2023 that killed a patient, MSF suspended their work at the Turgeau emergency center.¹⁰² Human Rights Watch stated that it is estimated that three-quarters of Haiti’s healthcare facilities lack adequate medical supplies and sufficient trained personnel as the security crisis has led to a mass exodus of health workers in recent years.¹⁰³

Economic Situation

Amidst the political, security, and environmental crises, Haiti’s economy has been decimated and threatens the future of the country. Many children are not able to attend school.¹⁰⁴ Haiti is one of the poorest countries in the world, and it remains the poorest in Latin America and the Caribbean.¹⁰⁵ The economy has contracted for five straight years, from 2019 through 2023.¹⁰⁶ With prices increasing 53 percent year-on-year as of early 2023, inflation in Haiti is among the ten highest in the world.¹⁰⁷ Previous gains in the reduction of poverty have been undone with two-thirds of households reporting a reduction in their income in March

2023.¹⁰⁸ On the UN’s Human Development Index,¹⁰⁹ Haiti ranked 158 out of 191 countries in 2022.¹¹⁰

In summary, Haiti is experiencing extraordinary and temporary conditions resulting from grave insecurity and gang crime, as well as socio-economic and humanitarian conditions, including those resulting from environmental disasters aggravating food insecurity.

Based on this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Haiti’s designation for TPS continue to be met. See INA sec. 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).

- There continue to be extraordinary and temporary conditions in Haiti that prevent Haitian nationals (or individuals having no nationality who last habitually resided in Haiti) from returning to Haiti in safety, and it is not contrary to the national interest of the United States to permit Haitian TPS beneficiaries to remain in the United States temporarily. See INA sec. 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

- The designation of Haiti for TPS should be extended for an 18-month period, beginning on August 4, 2024, and ending on February 3, 2026. See INA sec. 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

- Due to the conditions described above, Haiti should be simultaneously extended and redesignated for TPS beginning on August 4, 2024, and ending on February 3, 2026. See INA sec. 244(b)(1)(C) and (b)(2), 8 U.S.C. 1254a(b)(1)(C) and (b)(2).

- For the redesignation, the Secretary has determined that TPS applicants must demonstrate that they have continuously resided in the United States since June 3, 2024.

- Initial TPS applicants under the redesignation must demonstrate that they have been continuously physically present in the United States since

⁹³ Widlore Mérancourt, Kelly Kasulis Cho, and Amanda Coletta, *The Washington Post*, *Cholera Resurfaces in Haiti as gangs hinder access to water, hospitals*, Oct. 3, 2022, <https://www.washingtonpost.com/world/2022/10/03/haiti-cholera-gang-violence-water/> (last visited Apr. 29, 2024).

⁹⁴ Pan American Health Organization, *Cholera Outbreak in Hispaniola, Situation Report #6*, Nov. 17, 2022, <https://www.paho.org/en/documents/cholera-outbreak-hispaniola-2022-situation-report-6> (last visited Apr. 29, 2024).

⁹⁵ Haiti Health Cluster: Navigating a Multifaceted Humanitarian Crisis, World Health Organization (WHO), Sept. 5, 2023, available at: <https://healthcluster.who.int/newsroom/news/item/05-09-2023-haiti-health-cluster-navigating-a-multifaceted-humanitarian-crisis> (last visited Apr. 29, 2024).

⁹⁶ United Nations Integrated Office in Haiti—Report of the Secretary-General, UN Security Council, p.13, Jan. 15, 2024, available at: <https://reliefweb.int/report/haiti/united-nations-integrated-office-haiti-report-secretary-general-s202462-enarruzh> (last visited Apr. 29, 2024).

⁹⁷ World Report 2024—Haiti, Human Rights Watch, Jan. 11, 2024, available at: <https://www.ecoi.net/en/document/2103219.html> (last visited Apr. 29, 2024).

⁹⁸ Haiti | Earthquake and Cholera Outbreak—Emergency Appeal No. MDRHT018—Operation update #6, International Federation of Red Cross and Red Crescent Societies (IFRC), Nov. 3, 2023, available at: <https://reliefweb.int/report/haiti/haiti-earthquake-and-cholera-outbreak-emergency-appeal-no-mdrht018-operation-update-6> (last visited Apr. 29, 2024).

⁹⁹ Final report of the Panel of Experts on Haiti, UN Security Council, p. 145, Sept. 15, 2023, available at: <https://www.securitycouncilreport.org/>

un-documents/document/s-2023-674.php (last visited Apr. 29, 2024).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² MSF suspends work in Haiti emergency centre after armed group kills patient, Al Jazeera, Dec. 15, 2023, available at: <https://www.aljazeera.com/news/2023/12/15/msf-suspends-work-at-haitian-hospital-after-armed-group-kill-patient> (last visited Apr. 29, 2024).

¹⁰³ World Report 2024—Haiti, Human Rights Watch, Jan. 11, 2024, available at: <https://www.ecoi.net/en/document/2103219.html> (last visited Apr. 29, 2024).

¹⁰⁴ Final report of the Panel of Experts on Haiti, UN Security Council, pp. 2–3, Sept. 15, 2023, available at: <https://www.securitycouncilreport.org/un-documents/document/s-2023-674.php> (last visited Apr. 29, 2024).

¹⁰⁵ World Bank, *The World Bank in Haiti Overview* (last updated Oct. 26, 2023), <https://www.worldbank.org/en/country/haiti/overview> (last visited Apr. 29, 2024).

¹⁰⁶ Haiti—Recession: Haiti’s economy in free fall, –10.5% of GDP in total over 5 years, Haiti Libre, Jan. 3, 2024, available at: <https://www.haitilibre.com/en/news-41354-haiti-recession-haiti-s-economy-in-free-fall105-of-gdp-in-total-over-5-years.html> (last visited Apr. 29, 2024).

¹⁰⁷ Johnny Wood, These countries have been the hardest hit by food price inflation, World Economic Forum, Feb. 21, 2023, available at: <https://www.weforum.org/agenda/2023/02/countries-hit-by-food-prices-inflation-cost-of-living-crisis/> (last visited Apr. 29, 2024).

¹⁰⁸ World Bank, *The World Bank in Haiti Overview* (last updated Oct. 26, 2023), <https://www.worldbank.org/en/country/haiti/overview> (last visited Apr. 29, 2024).

¹⁰⁹ The Human Development Index (HDI) is a summary measure of average achievement in key dimensions of human development: a long and healthy life, being knowledgeable and have a decent standard of living. The latest 2024 HDI report contains data for 2022. See UN Development Programme (UNDP), *Human Development Index (HDI)* (last visited Apr. 29, 2024), <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>.

¹¹⁰ World Bank, *The World Bank in Haiti Overview* (last updated Oct. 26, 2023), <https://www.worldbank.org/en/country/haiti/overview> (last visited Apr. 29, 2024); UNDP, *Human Development Index (HDI)* (last visited Apr. 29, 2024), <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>.

August 4, 2024, the effective date of the redesignation of Haiti for TPS.

- There are approximately 214,000 current Haiti TPS beneficiaries who are eligible to re-register for TPS under the extension.

It is estimated that approximately 309,000 additional individuals may be eligible for TPS under the redesignation of Haiti. This population includes Haitian nationals in the United States in nonimmigrant status or without immigration status.

Notice of the Designation of Haiti for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Haiti's designation for TPS on the basis of extraordinary and temporary conditions are met, and it is not contrary to the national interest of the United States to allow Haitian TPS beneficiaries to remain in the United States temporarily. See INA sec. 244(b)(1)(C) and (b)(2), 8 U.S.C. 1254a(b)(1)(C) and (b)(2). On the basis of this determination, I am simultaneously extending the existing designation of Haiti for TPS for 18 months, beginning on August 4, 2024, and ending on February 3, 2026, and redesignating Haiti for TPS for the same 18-month period. See INA sec. 244(b)(1) and (b)(2); 8 U.S.C. 1254a(b)(1), and (b)(2).

Alejandro N. Mayorkas,
Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS based on the designation of Haiti, you must

submit a Form I-821. If you are submitting an initial TPS application, you must pay the application fee for Form I-821 (or request a fee waiver, which you may submit on Form I-912, Request for Fee Waiver). If you are filing an application to re-register for TPS, you do not need to pay the application fee. Whether you are registering as an initial applicant or re-registering, you are required to pay the biometric services fee. If you cannot pay the biometric services fee, you may ask USCIS to waive the fee. Please see additional information under the "Biometric Services Fee" section of this notice.

TPS beneficiaries are eligible for an Employment Authorization Document (EAD), which proves their authorization to work in the United States. You are not required to submit Form I-765 or have an EAD to be granted TPS, but see below for more information if you want an EAD to use as proof that you can work in the United States.

Individuals who have a Haiti TPS application (Form I-821) that was still pending as of July 1, 2024 do not need to file the application again. If USCIS approves an individual's Form I-821, USCIS will grant the individual TPS through February 3, 2026.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at <https://www.uscis.gov/tps>. Fees for the Form I-821, the Form I-765, and biometric services are also described in 8 CFR 106.2 and the fee waiver-related regulations in 8 CFR 106.3. In addition, USCIS Form G-1055, Fee Schedule, provides the current fees required for the Form I-821 and Form I-765 for both initial TPS applicants and existing TPS beneficiaries who are re-registering.

How can TPS beneficiaries obtain an Employment Authorization Document (EAD)?

Everyone must provide their employer with documentation showing

that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. If you want to obtain an EAD, you must file Form I-765 and pay the Form I-765 fee (or request a fee waiver, which you may submit on Form I-912). TPS applicants may file this form with their TPS application, or separately later, if their TPS application is still pending or has been approved.

Beneficiaries with a Haiti TPS-related Form I-765 that was still pending as of July 1, 2024 do not need to file the application again. If USCIS approves a pending TPS-related Form I-765, USCIS will issue the individual a new EAD that will be valid through February 3, 2026.

Refiling an Initial TPS Registration Application After Receiving a Denial of a Fee Waiver Request

If USCIS denies your fee waiver request, you can resubmit your TPS application. The fee waiver denial notice will contain specific instructions about resubmitting your application.

Filing Information

USCIS offers the option to applicants for TPS to file Form I-821 and related requests for EADs online or by mail. However, if you request a fee waiver, you must submit your application by mail. When filing a TPS application, you can also request an EAD by submitting a completed Form I-765 with your Form I-821.

Online filing: Form I-821 and Form I-765 are available for concurrent filing online.¹¹¹ To file these forms online, you must first create a USCIS online account.¹¹²

Mail filing: Mail your completed Form I-821; Form I-765, if applicable; Form I-912, if applicable; and supporting documentation to the proper address in Table 1—Mailing Addresses.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You live in Florida, and you are using the U.S. Postal Service (USPS)	USCIS Attn: TPS Haiti, P.O. Box 660167, Dallas, TX 75266–0167.
You live in Florida, and you are using FedEx, UPS, or DHL	USCIS Attn: TPS Haiti (Box 660167), 2501 S State Highway, 121, Business Suite 400, Lewisville, TX 75067–8003.
You live in Massachusetts or New York, and you are using the U.S. Postal Service (USPS).	USCIS Attn: TPS Haiti, P.O. Box 4091, Carol Stream, IL 60197–4091.
You live in Massachusetts or New York, and you are using FedEx, UPS, or DHL.	USCIS Attn: TPS Haiti (Box 4091), 2500 Westfield Drive, Elgin, IL 60124–7836.
You live in any other state or territory, and you are using the U.S. Postal Service (USPS).	USCIS Attn: TPS Haiti, P.O. Box 24047, Phoenix, AZ 85074–4047.

¹¹¹ Find information about online filing at “Forms Available to File Online,” <https://www.uscis.gov/file-online/forms-available-to-file-online>.

¹¹² https://myaccount.uscis.gov/users/sign_up.

TABLE 1—MAILING ADDRESSES—Continued

If . . .	Mail to . . .
You live in any other state or territory, and you are using FedEx, UPS, or DHL.	USCIS Attn: TPS Haiti (Box 24047), 2108 East Elliot Road, Tempe, AZ 85284–1806.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please file online or mail your Form I–765 to the appropriate address in Table 1. If you file online, please include the fee. If you file by mail, please include the fee or fee waiver request. When you request an EAD based on an IJ or BIA grant of TPS, please include with your application a copy of the order from the IJ or BIA granting you TPS. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions for Form I–821 list all the documents you need to

establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (also called registering) for TPS on the USCIS website at <https://www.uscis.gov/tps> under “Haiti.”

Travel

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If USCIS grants travel authorization, it gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, available at <https://www.uscis.gov/i-131>. You may file Form

I–131 together with your Form I–821 or separately. When you file Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for Form I–131, or request a fee waiver, which you may submit on Form I–912.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for your approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I–131 together with Form I–821 Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS): You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS accepted or approved your Form I–821. Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL: You must include a copy of the Notice of Action (Form I–797C or I–797) showing USCIS accepted or approved your Form I–821.	The address provided in Table 1. USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867. USCIS, Attn: I–131 TPS, 2501 S. State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS

Biometrics (such as fingerprints) are required for all applicants, in addition to a biometric services fee. As previously stated, if you cannot pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at <https://www.uscis.gov/tps>. USCIS may require you to visit an Application Support Center to have your biometrics collected. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at <https://www.dhs.gov/publication/dhsuscspia-060-customer-profile-management-service-cpms>.

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at <https://uscis.gov> or visit the USCIS Contact Center at <https://www.uscis.gov/contactcenter>. If you still need assistance, you may ask a question about your case online at <https://egov.uscis.gov/e-request/Intro.do> or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Am I eligible to receive an automatic extension of my current EAD through August 3, 2025, through this Federal Register notice?

Yes. Regardless of your country of birth, if you currently have a Haiti TPS-based EAD with the notation A–12 or C–

19 under Category and a “Card Expires” date of August 3, 2024, June 30, 2024, February 3, 2023, December 31, 2022, October 4, 2021, January 4, 2021, January 2, 2020, July 22, 2019, January 22, 2018, or July 22, 2017, this **Federal Register** notice automatically extends your EAD through August 3, 2025. Although this **Federal Register** notice automatically extends your EAD through August 3, 2025, you must timely re-register for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and avoid possible gaps in your employment authorization documentation.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at <https://www.uscis.gov/i-9-central/>

acceptable-documents. Employers must complete Form I-9 to verify the identity and employment authorization of all new employees. Within three business days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I-9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in these lists. Employers may not reject a document based on a future expiration date. You can find additional information about Form I-9 on the I-9 Central web page at <https://www.uscis.gov/I-9Central>. An EAD is an acceptable document under List A. See the section “How do my employer and I complete Form I-9 using my automatically extended EAD for a new job?” of this **Federal Register** notice for more information. If your EAD states A-12 or C-19 under Category and has a “Card Expires” date of August 3, 2024, June 30, 2024, February 3, 2023, December 31, 2022, October 4, 2021, January 4, 2021, January 2, 2020, July 22, 2019, January 22, 2018, or July 22, 2017, this **Federal Register** notice extends it automatically, and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I-9 through August 3, 2025, unless your TPS has been withdrawn or your request for TPS has been denied. Your country of birth noted on the EAD does not have to reflect the TPS-designated country of Haiti for you to be eligible for this extension.

What documentation may I present to my employer for Form I-9 if I am already employed but my current TPS-related EAD is set to expire?

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to reexamine your automatically extended EAD to check the “Card Expires” date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the “Card Expires” date and Category code, they should update the EAD expiration date in Section 2 of Form I-9. See the section “What updates should my current employer make to Form I-9 if my EAD

has been automatically extended?” of this **Federal Register** notice for more information. You may show this **Federal Register** notice to your employer to explain what to do for Form I-9 and to show that USCIS has automatically extended your EAD through August 3, 2025, but you are not required to do so. The last day of the automatic EAD extension is August 3, 2025. Before you start work on August 4, 2025, your employer is required by law to reverify your employment authorization on Form I-9. By that time, you must present any document from List A or any document from List C on Form I-9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in these lists to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, even if you already have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through February 3, 2026, you must file Form I-765 and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation to complete Form I-9, such as evidence of my status, proof of my Haitian citizenship, or a Form I-797C showing that I registered for TPS?

No. When completing Form I-9, employers must accept any documentation you choose to present from the Form I-9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request other documentation, such as proof of Haitian citizenship or proof of registration for TPS, when completing Form I-9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document if the EAD reasonably appears to be genuine and to relate to you. Refer to the “Note to Employees” section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, or

otherwise discriminates against you based on your citizenship or immigration status or your national origin.

How do my employer and I complete Form I-9 using my automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I-9 for a new job before August 4, 2025:

1. For Section 1, you should:
 - a. Check “A noncitizen authorized to work until” and enter August 3, 2025, as the “expiration date”; and
 - b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)
2. For Section 2, employers should:
 - a. Determine whether the EAD is auto-extended by ensuring it is in category A-12 or C-19 and has a “Card Expires” date of August 3, 2024, June 30, 2024, February 3, 2023, December 31, 2022, October 4, 2021, January 4, 2021, January 2, 2020, July 22, 2019, January 22, 2018, or July 22, 2017;
 - b. Write in the document title;
 - c. Enter the issuing authority;
 - d. Provide the document number; and
 - e. Write August 3, 2025, as the expiration date.

Before the start of work on August 4, 2025, employers must reverify the employee’s employment authorization on Form I-9.

What updates should my current employer make to Form I-9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-examine your current EAD if they do not have a copy of the EAD on file. Your employer should determine whether your EAD is automatically extended by ensuring that it contains Category A-12 or C-19 and has a “Card Expires” date of August 3, 2024, June 30, 2024, February 3, 2023, December 31, 2022, October 4, 2021, January 4, 2021, January 2, 2020, July 22, 2019, January 22, 2018, or July 22, 2017. Your employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD, they should update Section 2 of your previously completed Form I-9 as follows:

1. Write EAD EXT and August 3, 2025, as the last day of the automatic

extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By August 4, 2025, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization on Form I-9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I-9 into the document number field in E-Verify. Employers should enter August 3, 2025, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

If I am an employer enrolled in E-Verify, what do I do when I receive a "Work Authorization Documents Expiring" alert for an automatically extended EAD?

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have an employee who provided a TPS-related EAD when they first started working for you, you will receive a "Work Authorization Documents Expiring" case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on August 4, 2025, you must reverify their employment authorization on Form I-9. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email USCIS at I-9Central@uscis.dhs.gov. USCIS accepts calls and emails in English, Spanish, and many other languages. For questions about avoiding discrimination during the

employment eligibility verification process (Form I-9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800-255-8155 (TTY 800-237-2515). IER offers language interpretation in many languages. Employers may also email IER at IER@usdoj.gov or get more information online at <https://www.justice.gov/ier>.

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY 877-875-6028) or email USCIS at I-9Central@uscis.dhs.gov. USCIS accepts calls and emails in English, Spanish and many other languages. Employees or job applicants may also call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Worker Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I-9 and E-Verify. The IER Worker Hotline provides language interpretation in many languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in these lists. Employers may not require extra or additional documentation other than what is required to complete Form I-9. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (mismatch) must promptly inform employees of the mismatch and give these employees an opportunity to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I-9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result occurs if E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). For more

information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Form I-9 and E-Verify procedures is available on the IER website at <https://www.justice.gov/ier> and the USCIS and E-Verify websites at <https://www.uscis.gov/i-9-central> and <https://www.e-verify.gov>.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an automatically extended EAD referenced in this **Federal Register** notice, you do not need to show any other document, such as a Form I-797C, Notice of Action, reflecting receipt of a Form I-765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary or applicant, show you are authorized to work based on TPS or other status, or that may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A-12 or C-19, even if your country of birth noted on the EAD does not reflect the TPS-designated country of Haiti;
- Your Form I-94, Arrival/Departure Record;
- Your Form I-797, Notice of Action, reflecting approval of your Form I-765; or
- Form I-797 or Form I-797C, Notice of Action, reflecting approval or receipt of a past or current Form I-821, if you received one from USCIS.

Check with the government agency requesting documentation about which document(s) the agency will accept.

Some state and local government agencies use SAVE to confirm the current immigration status of applicants for public benefits. While SAVE can verify that an individual has TPS or a

pending TPS application, each agency's procedures govern whether they will accept an unexpired EAD, Form I-797, Form I-797C, or Form I-94. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-Number, USCIS number, or Form I-94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at <https://www.uscis.gov/save/save-casecheck>. CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as your A-Number, USCIS number, or Form I-94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must allow you to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, <https://www.uscis.gov/save>, has detailed information on how to correct or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2024-14247 Filed 6-28-24; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/
A0A501010.999900]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact in California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Table Mountain Rancheria and the State of California.

DATES: The extension takes effect on July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, IndianGaming@bia.gov; (202) 219-4066.

SUPPLEMENTARY INFORMATION: An extension to an existing Tribal-State Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Table Mountain Rancheria and the State of California have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to December 31, 2024. This publication provides notice of the new expiration date of the compact.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024-14350 Filed 6-28-24; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500171580]

Notice of Realty Action: Direct Sale of Public Lands in Custer County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes a non-competitive (direct) sale of a parcel of BLM-managed public lands in Idaho to permanently resolve the inadvertent and unauthorized use of the land. The parcel, located in Custer County, contains 2.07 acres and, if approved, would be sold to Mr. Raymond M. Simon. The sale would be subject to the applicable provisions of the Federal

Land Policy and Management Act of 1976 (FLPMA), as amended, and BLM land sale regulations. The surface and mineral estate would be sold for no less than the appraised fair market value of \$30,000.

DATES: Interested parties must submit written comments, postmarked, or delivered no later than August 15, 2024.

The land would not be offered for sale until after August 30, 2024.

ADDRESSES: Mail written comments to Martha Price, Acting Field Manager, BLM Challis Field Office, P.O. Box 817, Challis, ID 83226. Comments may also be emailed to mprice@blm.gov.

FOR FURTHER INFORMATION CONTACT: David Hilliard, Assistant Field Manager, BLM Challis Field Office, phone: 208-879-6217, or email: dhilliard@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: The BLM will consider a direct sale in accordance with applicable provisions of Sections 203 and 209 of FLPMA and BLM land sale regulations. The parcel would be sold for no less than the appraised fair market value of \$30,000.

Boise Meridian, Idaho

T. 13 N., R. 19 E.

Sec. 9, lot 4.

The area described contains 2.07 acres.

There is no known mineral value in the parcel; therefore, the mineral estate would also be conveyed in accordance with Section 209 of FLPMA. Mr. Raymond M. Simon would be required to pay a \$50 non-refundable filing fee for conveyance of the available mineral interests and any associated administrative costs with the sale. The proposed sale is in conformance with the BLM Challis Resource Management Plan approved in July 1999, and the plan maintenance action approved on May 10, 2022. The BLM prepared a parcel-specific Environmental Assessment (EA), document number DOI-BLM-ID-1030-2023-0012-EA, in connection with this realty action. It can be viewed online at <https://eplanning.blm.gov/eplanning-ui/project/2024447/510>.

Regulations at 43 CFR 2710.0-3(a) and 2711.3-3(a) authorize the BLM to utilize a direct sale of public land when a competitive sale is not appropriate and the public interest would best be

served by a direct sale. The BLM would offer the lands to Mr. Raymond M. Simon since he is the adjacent landowner and owns the access to the public land. The subject parcel has been determined to meet FLPMA Section 203(a) sale criteria. The parcel is difficult and uneconomic to manage because it is encumbered by inadvertent, unauthorized privately-owned improvements.

Pursuant to the requirements of 43 CFR 2711.1–2(d), publication of this notice in the **Federal Register** will segregate the land from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the public land. The effect of this segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or two years after the date of publication in the **Federal Register**, unless extended by the BLM Idaho State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The BLM will publish this notice in *The Challis Messenger* newspaper once a week for three consecutive weeks.

The conveyance document, if issued, will include the following terms, conditions, and reservations:

1. A reservation to the United States for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890;

2. Subject to the continuing use of the Garden Creek Allotment by Micky and Maureen Roskelley pursuant to livestock grazing permit no. ID01347 for a period to expire on January 6, 2025;

3. Subject to those perpetual rights for road purposes granted to Idaho Department of Transportation, its successors and assigns, by right-of-way no. IDI 0–000935, pursuant to Section 17 of the Federal Aid Highway Act of November 9, 1921 (42 Stat. 0216);

4. Subject to those rights for buried telephone line purposes granted to Custer Telephone Cooperative, Inc., its successors and assigns, by right-of-way no. IDI–016458, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761). Expires September 6, 2032;

5. Subject to those rights for buried fiber optic line purposes granted to Custer Telephone Cooperative, Inc., its successors and assigns, by right-of-way no. IDI–033655, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

6. Subject to those perpetual rights for overhead power line purposes granted to Salmon River Electric Cooperative, its successors and assigns, by right-of-way

no. IDI–016348, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

7. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented land;

8. Valid existing rights issued prior to conveyance; and

9. Additional terms and conditions that the authorized officer deems appropriate.

The BLM will make available the reports pertaining to the land, which include an appraisal, environmental site assessment, and mineral potential report for review at the Challis Field Office, 721 East Main Avenue, Suite 8, Challis, ID 83226. Interested parties may submit, in writing, any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the parcel, at the address listed in the **ADDRESSES** section by the deadline listed in the **DATES** section.

The land is suitable for direct sale under FLPMA, without competition, consistent with 43 CFR 2711.3–3(a)(4), as direct sales may be used “when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale,” including when “the adjoining ownership pattern and access indicate a direct sale is appropriate.” It is also suitable for direct sale consistent with 43 CFR 2711.3–3(a)(5) because there is a need to resolve an inadvertent and unauthorized use of public lands.

The BLM Idaho State Director will review adverse comments regarding the parcel and may sustain, vacate, or modify this realty action, in-whole or in-part. In the absence of timely objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us, in your comment, to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 2711.1–2)

Peter Ditton,

Acting BLM Idaho State Director.

[FR Doc. 2024–14443 Filed 6–28–24; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038204; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Davis (UC Davis) intends to repatriate certain cultural items that meet the definition of sacred objects and objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after July 31, 2024.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email mnnoble@ucdavis.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UC Davis, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 32 cultural items have been requested for repatriation. The 32 sacred objects/objects of cultural patrimony are baskets. The University is unaware of any treatment of the sacred objects/objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

There are four baskets (CHM–362, 363, 364, 365) that were purchased by C. Hart Merriam in 1900 from near the Klamath River. There are eight baskets (CHM–353, 354, 355, 356, 357, 358, 359, 360) where the date and circumstances of C. Hart Merriam's acquisition is unknown. Original documentation indicated the items are from the Lower Klamath River. There are six baskets (CHM–1151, 1152, 1201, 1202, 1203,

1205) where the date and circumstances C. Hart Merriam's acquisition is unknown. Larry Dawson (UC Berkeley lecturer c.1980s) attributed these baskets as Yurok or Karuk. There are 10 baskets (CHM-342, 343, 344, 345, 346, 347, 348, 349, 350, 352) which were purchased by C. Hart Merriam in 1910 from an unnamed Yurok woman near "Requa, Klamath mouth" in Del Norte County. Three baskets (CHM-339, 340, 341) were purchased by C. Hart Merriam in 1921 from an unnamed woman near "Stone Lagoon in Humboldt County. One basket (CHM-361) was purchased by C. Hart Merriam in 1901 in San Francisco. Merriam attributed this item to the Yurok near Klamath River.

Determinations

The UC Davis has determined that:

- The 32 sacred objects/objects of cultural patrimony described in this notice are, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a reasonable connection between the cultural items described in this notice and the Resighini Rancheria, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the UC Davis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The UC Davis is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in

this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-14471 Filed 6-28-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS-WASO-NAGPRA-NPS0038198;
PPWOCRADNO-PCU00RP14.R50000]**

Notice of Intended Repatriation: Stanford University, Stanford, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Stanford University intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. These items were removed from Riverside County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after July 31, 2024.

ADDRESSES: Laura Jones, Repatriation Officer, Stanford University, 477 Oak Road, Stanford, CA 94305, telephone (650) 723-9664, email ljones@stanford.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Stanford University, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of four cultural items have been requested for repatriation. The four objects of cultural patrimony are baskets removed from the vicinity of Temecula in Riverside County, CA, during the first half of the Twentieth Century.

Basket 1996.245 was acquired by Evelyn and Franklyn Clerk at an unknown date and transferred by gift to

the Cantor Center for the Visual Arts at Stanford University in 1996.

Basket 1996.246 was acquired by Evelyn and Franklyn Clerk at an unknown date after 1930 and transferred by gift to the Cantor Center for the Visual Arts at Stanford University in 1996. Note with the basket lists "Temecula" as the source.

Basket 1939.268 was acquired by Frona Wait Colburn (also known as Mrs. Fredrick Henry Colburn) between 1899 and 1939. Ms. Colburn transferred a portion of her large collection of West Coast baskets to the Stanford Museum (now the Cantor Center for the Visual Arts at Stanford) in 1939.

Basket 1984.114 was acquired by Stanford faculty member Virgil Whitaker at an unknown date, likely between 1930 and 1945. Professor Whitaker donated the basket to the Stanford Museum in 1984.

Determinations

Stanford University has determined that:

- The four objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Pechanga Band of Indians (*previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California).

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, Stanford University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. Stanford University

is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-14464 Filed 6-28-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038201;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum intends to repatriate a certain cultural item that meets the definition of a sacred object and object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after July 31, 2024.

ADDRESSES: June Carpenter, NAGPRA Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665-7820, email jcarpenter@fieldmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The sacred object/object of cultural patrimony is a wooden bowl (represented by Field Museum catalog number 155620). The bowl was removed from the Winnebago Reservation by Oliver LaMere. LaMere sold the bowl to the Museum on

October 2, 1926, as part of a larger collection. Museum documentation shows that the bowl was treated with both CTED and "MothOff" periodically while on display. Staff believe CTED is likely a mixture of carbon tetrachloride and ethylene dichloride, and that MothOff may have been a proprietary mixture containing paradichlorobenzene. Neither is believed to be present on the bowl today.

Determinations

The Field Museum has determined that:

- The one sacred object/object of cultural patrimony described in this notice is, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, a specific ceremonial object needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a reasonable connection between the cultural items described in this notice and the Winnebago Tribe of Nebraska.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25

U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-14468 Filed 6-28-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038195;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Sam Noble Oklahoma Museum of Natural History, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Sam Noble Oklahoma Museum of Natural History (SNOMNH), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 31, 2024.

ADDRESSES: Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072-7029, telephone (405) 325-1994, email mlevine@ou.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the SNOMNH, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

In 1941, human remains representing, at minimum, 64 individuals were removed from the Henry Heflin I site (34Lf14) in LeFlore County, OK. This site was excavated by the Works Progress Administration (WPA) in 1941, and the associated finds were transferred to the Museum that same year. The human remains and

associated funerary objects from site 34Lf14 were interred during the Woodland Period (300 B.C.–A.D. 900). The human remains include 15 adult females, nine adult males, two adolescents, five children, one infant, three adult probable females, 13 adult probable males, 15 adults for whom sex could not be determined, and one individual for whom age and sex could not be determined.

The 62 associated funerary objects are 24 stone projectile points, five boatstones, two pieces of hematite, two stone gorges, one stone tool, one worked stone, two pieces of quartz, one piece of galena, one reconstructible decorated ceramic vessel, one potsherd, five faunal bone tools, three modified faunal bones, one turtle shell fragment, six faunal bones, five shell jewelry pieces, one modified shell, and one shell with red ochre.

In 1942, human remains representing, at minimum, 43 individuals were removed from the DeHart II site (34Lf17) in LeFlore County, OK. This site was excavated by the WPA in 1942, and the associated finds were transferred to the Museum that same year. The human remains and associated funerary objects from site 34Lf17 were interred during the Woodland Period (300 B.C.–A.D. 900). The human remains include seven adult females, six adult males, six adolescents, five children, six adult probable females, six adult probable males, five adults for whom sex could not be determined, and two individuals for whom age and sex could not be determined.

The 44 associated funerary objects are six stone projectile points, two stone bifaces, two boatstones, one inscribed stone gorget, two pieces of hematite, one piece of clay with a human fingerprint, two potsherds, one faunal bone hairpin, one antler flaker, one deer bone fragment, one buckhorn fragment, 10 faunal bones, two bags of dog bones, three turtle shell fragments, four shell beads, two shell gorgets, two shells, and one piece of burned wood.

In 1941, human remains representing, at minimum, 34 individuals were removed from the DeHart I site (34Lf18) in LeFlore County, OK. This site was excavated by the WPA in 1941, and the associated finds were transferred to the Museum that same year. The human remains and associated funerary objects from site 34Lf18 were interred during the Woodland Period (300 B.C.–A.D. 900). The human remains include four adult females, four adult males, seven children, six adult probable females, five adult probable males, two adolescents, and six individuals for

whom sex and age could not be determined.

The 37 associated funerary objects are five stone projectile points, three stone manos, one stone gorget, four pieces of hematite, one stone flake, two potsherds with grog temper, two faunal bone pins, three broken faunal bone pins, one broken faunal bone pendant, one faunal bone awl fragment, one bear tooth, three buckhorns, five buckhorn fragments, one bag of buckhorn fragments, one bag of beaver tooth fragments, one deer bone, and two bags of faunal bones.

In 1941, human remains representing, at minimum, 125 individuals were removed from the Copeland site (34Lf20) in LeFlore County, OK. This site was excavated by the WPA in 1941, and the associated finds were transferred to the Museum in the same year. The human remains and associated funerary objects from site 34Lf20 were interred during the Woodland Period (300 B.C.E.–900 C.E.). The human remains include 24 adult females, 18 adult males, seven adolescents, 16 children, one infant, 17 adult probable females, 12 adult probable males, 28 adults of indeterminate sex, and two individuals for whom sex and age could not be determined.

The 127 associated funerary objects are 15 stone projectile points, three stone projectile point fragments, one boatstone, three stone celts, one stone gorget, one stone axe, one hammerstone, one stone inlay from a wooden ear plug, six pieces of hematite, one obsidian flake, two worked stones, two stone flakes, one ceramic vessel, 11 potsherds, two bags of potsherds, four faunal bone hairpins, one faunal bone bead, three faunal bone awls, three faunal bone awl fragments, two worked faunal bones, two bags of dog bones, three deer bones, four faunal bones, one turtle shell fragment, 11 bags of faunal bones, two bags of faunal teeth, 35 shell beads, one bag of shell bead fragments, two shells, one shell fragment, and one bag of seeds and wood fragments.

In 1940 and 1941, human remains representing, at minimum, 53 individuals were removed from the Conner site (34Lf21) in LeFlore County, OK. This site was excavated by the WPA in 1940 and 1941, and the associated finds were transferred to the Museum shortly thereafter. The human remains and associated funerary objects from site 34Lf21 were interred during the Woodland Period (300 B.C.–A.D. 900). The human remains include 14 adult females, four adult males, four adolescents, nine children, one infant, nine adult probable females, five adult

probable males, and seven adults for whom sex could not be determined.

The 37 associated funerary objects are 13 stone projectile points, one stone projectile point fragment, one stone cone-shaped paint cup, one stone gorget fragment, nine pieces of worked hematite, one worked stone, one potsherd, one faunal bone awl, one faunal bone knife, four faunal bones, three bags of faunal bones, and one fragment of wood.

In 1940, human remains representing, at minimum, 44 individuals were removed from the John Smith site (34Lf22) in LeFlore County, OK. This site was excavated by the WPA in 1940 and 1941, and the associated finds were transferred to the Museum shortly thereafter. The human remains and associated funerary objects from site 34Lf22 were interred during the Woodland Period (300 B.C.–A.D. 900). The human remains include seven adult females, three adult males, four adolescents, three infants, nine adult probable females, seven adult probable males, six adults for whom sex could not be determined, and five individuals for whom sex and age could not be determined.

The 43 associated funerary objects are eight stone projectile points, three paint stones, one hammerstone, one boatstone, two worked stone tools, two potsherds, five faunal bone beads, one faunal bone awl, two faunal bone awl fragments, one faunal bone fish hook fragment, four worked faunal bones, three faunal bones, four bags of faunal bones, one turtle shell fragment, one bag of turtle shell fragments, one shell pendant fragment, two bags of shell fragments, and one piece of wood.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The SNOMNH has determined that:

- The human remains described in this notice represent the physical remains of 363 individuals of Native American ancestry.
- The 350 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Caddo Nation of Oklahoma and the

Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the SNOMNH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The SNOMNH is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-14463 Filed 6-28-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038203; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: University of Georgia, Laboratory of Archaeology, Athens, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Georgia, Laboratory of Archaeology intends to repatriate a certain cultural item that meets the definition of an unassociated funerary objects and that has a cultural affiliation

with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after July 31, 2024.

ADDRESSES: Amanda Thompson, University of Georgia, Laboratory of Archaeology, 1125 Whitehall Road, Athens, GA 30605, telephone (706) 542-8737, email arobthom@uga.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Georgia, Laboratory of Archaeology and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is an axe was surface collected from 38OC3, Toxaway in 1968 by Marshall Williams. The Laboratory has been unable to locate information for any research on this object but the axe was conserved.

Determinations

The University of Georgia, Laboratory of Archaeology has determined that:

- The one unassociated funerary object described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary object has been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural item described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized

representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the University of Georgia, Laboratory of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The University of Georgia, Laboratory of Archaeology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-14470 Filed 6-28-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038202; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: California Department of Transportation, Marysville, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California Department of Transportation has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 31, 2024.

ADDRESSES: Dr. Lisa Bright, Branch Chief District 3, Cultural Resources

(South), California State Department of Transportation, 703 B Street Marysville, CA 95901, telephone (530) 812-4569, email Lisa.Bright@dot.ca.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California Department of Transportation, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. The 806 catalog entries of associated funerary objects are tools, faunal remains, floral remains, ground stone, worked bone, and beads and other ornamental items.

In 1987, 1989, and 1990 the collection was excavated by the California Department of Transportation from CA-GL-217. Reporting of the data recovery excavation was completed in 2006. Repatriation and reburial of ancestors and associated funerary objects (total number unknown as this was not included in reporting or the catalog) was completed in 2008. Additional human remains and associated funerary objects were identified during the inventory verification completed by the California Department of Transportation and Paskenta Band of Nomlaki Indians in 2024. Of the 806 catalog entries of associated funerary objects, 61 catalogue entries are currently missing from the collection. California State University, Chico and the California Department of Transportation continue to look for them. No potentially hazardous substances were used to treat any of the human remains or associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The California Department of Transportation has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.

- The 806 catalog entries of associated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California and the Paskenta Band of Nomlaki Indians of California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the California Department of Transportation must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The California Department of Transportation is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-14469 Filed 6-28-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038196;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Aurora History Museum and Historic Sites, Aurora, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Aurora History Museum and Historic Sites has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 31, 2024.

ADDRESSES: Elizabeth Ricci, Aurora History Museum and Historic Sites, 15051 East Alameda Parkway, Aurora, CO 80012, telephone (303) 739-6660, email ericci@auroragov.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Aurora History Museum and Historic Sites, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, two individuals have been identified. The eight associated funerary objects are five charcoals, two shells, and one lithic.

In April of 1982, two neighborhood children discovered human bone eroding from the bank of West Toll Gate Creek in Arapahoe County: Aurora, Colorado. The children reported their find, and the site was excavated soon after. Site 5AH 244 is located on the first terrace above and on the cut bank of West Toll Gate Creek. The objective of the excavation was to recover human remains, reinter, and document as much information on the burial as possible. A Medicine Man, Charlie Kills Enemy of the Sioux Tribe, was in the area at the time and brought in to ensure proper

care of the remains. Charlie Kills Enemy conducted a ceremony to ask the ancestors if they have permission to perform carbon dating test, they agreed. The ancestors were then asked where they would like to be reinterred. They requested to be buried on a hill. The human remains, an amazonite pendent, and an atlatl weight were reinterred in June of 1985 at Golden Gate Canyon State Park on five acres of land designated for the Tribes just northwest of Golden, Colorado prior to NAGPRA law. A ceremony took place with Elders from the Shoshone and Cheyenne Tribes. A Medicine Man was present from the Arapaho Tribe. The Elders and Medicine Man were not named. Reinternment was on a hill as requested. The exact reinternment site is unknown to the museum. We are working with Golden Gate Canyon State Park to find the location.

We recently discovered a collection of objects and items related to the burial site 5AH 244. Within the collection are soil samples that were taken from the burial pits, a chest cavity, and surrounding earth. The soil samples contain pieces of bone not consistent with the animal bones that have been found within the collection. These bones are seen as remnants of the two individuals previously found. Items that appear to be associated funerary objects are five charcoals, two shells, and one lithic. There are animal bones, lithics, flakes, soils, and a petrified wood knife that are not associated with the burial. It was requested by the Arapaho and Cheyenne council that the entire collection including non-associated items be reinterred in the exact spot of the original reinternment or as close as possible.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Aurora History Museum and Historic Sites has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The eight objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a connection between the human remains and associated funerary objects described in this notice and the Cheyenne and Arapaho Tribes, Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the Aurora History Museum and Historic Sites must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Aurora History Museum and Historic Sites is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-14473 Filed 6-28-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038199;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: San Bernardino County Museum, Redlands, CA

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Bernardino County Museum has

completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after July 31, 2024

ADDRESSES: Tamara Serrao-Leiva, San Bernardino County Museum, 2024 Orange Tree Lane, Redlands, CA 92374, telephone (909) 798-8623, email tserrao-leiva@sbcm.sbcounty.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the San Bernardino County Museum and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, three individuals have been identified from Smith Mound, Henderson County, Kentucky. These human remains were donated by a private collector at an unknown date. It was deposited to the museum before 2015, at which time it was given a box number N#15. In 2016 an inventory was conducted for human remains in the museum's anthropology storage area, where one box listed ancestors were found at "Smith Mound, Kentucky (Henderson Co)." Human remains were confirmed by osteologist in June of 2024. No further documentation exists.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The San Bernardino County Museum has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe; The Osage Nation; and

the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the San Bernardino County Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The San Bernardino County Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-14466 Filed 6-28-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038206;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Western Washington University, Department of Anthropology, Bellingham, WA

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Western Washington University (WWU) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects

and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from 45-WH-29 in Whatcom County, WA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 31, 2024.

ADDRESSES: Dr. Judith Pine, Western Washington University, Department of Anthropology, Arntzen Hall 340, 516 High Street, Bellingham, WA 98225, telephone (360) 650-4783, email pinej@www.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the WWU, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at minimum, two individuals were removed from Whatcom County, WA. Students from WWU worked at site 45-WH-29 under the direction of WWU professor Dr. Garland Grabert in the fall of 1970 and the spring of 1971. Initially focusing on an adjacent site 45-WH-11, additional fieldwork occurred at 45-WH-29 when human remains were observed eroding out of a nearby bluff. Notes indicate surface collection was conducted. A total of six associated funerary objects are present (three lots and three objects). The six associated funerary objects consist of one lot fire broken rock, one lot charcoal, one lot level bag with lithics and bone, one sandstone abrader, one bone point, and one barbed harpoon point.

A minimum of one individual was reported in the original NAGPRA Inventory in 1995; one subadult (estimated at 9-10 years (surface collected)). During the WWU 2018-2020 Repatriation and Rehousing Project, additional ancestral remains were found in the "faunal" bags from 1970-71, and three additional associated funerary objects were identified by Cultural Specialist, R. Tom. The newly identified remains likely represent one adult individual. The original NAGPRA Inventory represents a subadult, but the newly identified remains are those of an adult. Therefore, we are considering this to be an additional individual. No known individuals were identified. No hazardous chemicals are known to have

been used to treat the human remains while in the custody of WWU.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The WWU has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- A total of six associated funerary objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Lummi Tribe of the Lummi Reservation and the Nooksack Indian Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the WWU must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The WWU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–14467 Filed 6–28–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038194;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Longyear Museum of Anthropology, Colgate University, Hamilton, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Longyear Museum of Anthropology (LMA) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after July 31, 2024.

ADDRESSES: Kelsey Olney-Wall, Repatriation Manager, University Museums, Colgate University, 13 Oak Drive, Hamilton, NY 13346, telephone (315) 228–7677, email kolneywall@colgate.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the LMA, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. The 37 associated funerary objects are five bags of sand, one shard of glass or obsidian, one small rolled piece of tin, one beaver tooth fragment, 27 wampum/shell beads, one piece of charcoal, and one wood fragment. The Ancestral remains representing one individual are connected to a previous repatriation of an individual to the Onondaga Nation in 1979. The

previously repatriated individual was removed from an unknown archaeological site, within the Onondaga Nation lands, between 1950 and 1970. According to a letter written by former curator Gary Urton to Rema Loeb, President, Chenango County Rights for American Indians Now, on January 31, 1979, the case displaying the individual and the associated funerary items were disassembled and moved into museum storage. On April 16, 1979, Gary Urton wrote a letter to Lee Lyons from Onondaga Nation, noting the individual was removed from Onondaga Nation lands. Urton worked with Mr. Lyons on returning the individual and the associated funerary items in the museum display. The two lower incisors, two bone fragments, and associated funerary objects included in this notice were inadvertently retained. No known hazardous substances are known to be present.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The LMA has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 37 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Onondaga Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this

notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the LMA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The LMA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–14472 Filed 6–28–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0038197;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after July 31, 2024.

ADDRESSES: Ryan Wheeler, Robert S. Peabody Institute of Archaeology, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email rwheeler@andover.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Robert S. Peabody Institute of Archaeology, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The

National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 1,277 cultural items have been requested for repatriation. Under the auspices of the Robert S. Peabody Institute of Archaeology (then the Department of Archaeology at Phillips Academy), Warren K. Moorehead conducted an archeological survey of Maine from 1912–1920. During this survey, Moorehead removed thousands of items from multiple cemetery and burial sites in the state and sent much of it to what is now the Robert S. Peabody Institute of Archaeology. Moorehead detailed his expedition in *A Report on the Archaeology of Maine* published in 1922. While much of the material removed from these sites is housed at the Peabody Institute, Moorehead also traded items from Maine cemeteries with other institutions. Some cultural items from these cemeteries are present in other institutional collections.

The 828 unassociated funerary objects were removed from seven known cemeteries in Hancock County, ME. The 828 cultural items include flaked and ground stones, modified faunal remains, ceramic fragments, and samples of soil, ochre, and charcoal. Of those items listed above, 74 are recorded in the Peabody Institute's database but could not be located. Peabody Institute staff members continue to look for these 74 missing items.

The nine unassociated funerary objects were removed from one known cemetery in Kennebec County, ME. The nine cultural items are chipped and ground stones.

The 297 unassociated funerary objects were removed from three known cemeteries in Knox County, ME. The 297 cultural items include flaked and ground stones, modified flora and faunal remains, and ceramic fragments. Of those items listed above, 11 are recorded in the Peabody Institute's database but could not be located. Peabody Institute staff members continue to look for these 11 missing items.

The 142 unassociated funerary objects were removed from three known cemeteries in Penobscot County, ME. The 142 cultural items include flaked and ground stones as well as samples of soil, pyrite, and ochre.

The one unassociated funerary object was removed from a known cemetery in Somerset County, ME. The one unassociated funerary item is a pipe.

Determinations

The Robert S. Peabody Institute of Archaeology has determined that:

- The 1,277 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Houlton Band of Maliseet Indians; Mi'kmaq Nation (*previously* listed as Aroostook Band of Micmacs); Passamaquoddy Tribe; and the Penobscot Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after July 31, 2024. If competing requests for repatriation are received, the Robert S. Peabody Institute of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Robert S. Peabody Institute of Archaeology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 24, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–14465 Filed 6–28–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2022–0023]

Atlantic Wind Lease Sale 10 for Commercial Leasing for Wind Power Development on the U.S. Central Atlantic Outer Continental Shelf—Final Sale Notice

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final sale notice.

SUMMARY: This Final Sale Notice (FSN) contains information pertaining to the areas available for commercial wind power leasing during Atlantic Wind Lease Sale 10 (ATLW–10) on the U.S. Central Atlantic Outer Continental Shelf (OCS). Specifically, this FSN details certain provisions and conditions of the leases, auction details, the lease form, criteria for evaluating competing bids, and procedures for award, appeal, and lease execution. The Bureau of Ocean Energy Management (BOEM) will offer two leases for sale using an ascending clock auction with multiple-factor bidding: Lease OCS–A 0557 and Lease OCS–A 0558 (Lease Areas). Bidders will be subject to a ‘one-per-customer’ rule, as explained below. BOEM will use new auction software for the lease sale, resulting in minor changes to the auction rules. The Lease Areas are in the previously identified wind energy areas (WEAs) A–2 and C–1, offshore the States of Delaware and Maryland and the Commonwealth of Virginia. The issuance of any lease resulting from this sale will not constitute approval of project-specific plans to develop offshore wind energy. Such plans, if submitted by the Lessee, will be subject to environmental, technical, and public reviews prior to a BOEM decision on whether the proposed activity should be authorized.

DATES: BOEM will hold an online mock auction for potential bidders starting at 9:00 a.m. Eastern Daylight Time (EDT) on August 12, 2024. The monetary auction will be held online and will begin at 9:00 a.m. EDT on August 14, 2024. Additional details are provided in the section entitled, “Deadlines and Milestones for Bidders.”

FOR FURTHER INFORMATION CONTACT: Bridgette Duplantis, Bureau of Ocean

Energy Management, Office of Leasing and Plans, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123, (504) 736-7502 or bridgette.duplantis@boem.gov.

SUPPLEMENTARY INFORMATION:

I. Background

a. *Call for Information and Nominations* (Call): On April 29, 2022, BOEM published the Call for Information and Nominations-Commercial Leasing for Wind Power Development on the Central Atlantic Outer Continental Shelf (see 87 FR 25539). The Call consisted of six areas labeled A–F. BOEM received 66 comments from the general public; Federal, State, and local agencies; the fishing industry; industry groups; developers; non-governmental organizations (NGOs); universities; and other stakeholders. Comments can be viewed at <https://www.regulations.gov/document/BOEM-2022-0023-0001/comment>. Three developers nominated areas for a commercial wind energy lease within the Call Area.

b. *Area Identification (Area ID)*: After modifying the Area ID process in a Notice to Stakeholders, which is available at <https://www.boem.gov/newsroom/notes-stakeholders/boem-enhances-its-processes-identify-future-offshore-wind-energy-areas>, BOEM used this process to support identification of draft WEAs in the Central Atlantic. After the close of the Call comment period on June 28, 2022, BOEM initiated the Area ID process by reviewing the input received on the Call. BOEM and the National Oceanic and Atmospheric Administration's (NOAA's) National Centers for Coastal Ocean Science (NCCOS) Team used an ocean planning tool to identify the eight draft WEAs on the U.S. Central Atlantic OCS using the methodology outlined in the BOEM and NCCOS Draft Report: Development of the Central Atlantic Wind Energy Areas, which can be found at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/BOEM_NCCOS_JointReport_DraftWEAs.pdf.

On November 16, 2022, BOEM opened a 30-day public comment period on eight draft WEAs on the OCS offshore the U.S. Central Atlantic coast, covering approximately 1.7 million acres. BOEM considered the following non-exclusive information sources when identifying the draft WEAs: comments and nominations received on the Call; information from the Central Atlantic Intergovernmental Renewable Energy Task Force; input from Delaware, Maryland, Virginia, and North Carolina state agencies; input

from Federal agencies; input from federally recognized Tribes; comments from stakeholders and ocean users, including the maritime community, offshore wind developers, and the commercial and recreational fishing industry; state and local renewable energy goals; and information on domestic and global offshore wind market and technological trends. BOEM's draft WEA recommendations did not reflect a final assessment from the Department of Defense (DoD) regarding compatibility of the draft WEAs with DoD needs.

After the close of the draft WEA comment period on December 16, 2022, BOEM finalized the Area ID process after reviewing the input received from all stakeholders mentioned above and the DoD assessment. BOEM announced the final WEAs on July 31, 2023, by designating three WEAs within the Call Area. The first WEA (A–2) is 101,767 acres and located approximately 26 nautical miles (nm) from the mouth of the Delaware Bay. The second WEA (B–1) is 78,285 acres and located 23.5 nm offshore Ocean City, Maryland. The third WEA (C–1) is 176,506 acres and located approximately 35 nm from the mouth of the Chesapeake Bay. The final WEAs comprise 356,558 acres and would support approximately 4.3–8.1 GW of energy production if fully developed. BOEM, DoD (the Departments of the Air Force and Navy), and the National Aeronautics and Space Administration (NASA) agreed to undertake an in-depth review of WEA B–1 to determine if the impacts to military and NASA operations could be acceptable and/or mitigated. The Central Atlantic Area ID process and documentation can be found at <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>.

c. *Environmental Reviews*: On August 1, 2023, BOEM published a notice of intent to prepare an environmental assessment (EA) to consider potential environmental consequences of site characterization activities (e.g., biological, archaeological, geological, and geophysical surveys and core samples) and site assessment activities (e.g., installation of meteorological buoys) that are expected to take place after issuance of wind energy leases in the Call Area. When scoping the EA, BOEM sought comments on the issues and alternatives that should inform the EA. BOEM received 104 comment submissions, which can be found at <https://www.regulations.gov> under Docket No. BOEM–2023–0034. In addition to the preparation of the Draft EA, including compliance with threatened and endangered species

requirements for certain data collection activities associated with OCS leasing (<https://www.boem.gov/sites/default/files/documents/renewable-energy/OSW-surveys-NLAA-programmatic.pdf>), BOEM initiated other required consultations under the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act. The EA and associated consultations informed BOEM's decision on whether to proceed with this FSN. BOEM will conduct additional environmental reviews upon receipt of a Lessee's Construction and Operations Plan (COP) if the proposed leases reach that stage of development.

II. List of Eligible Bidders

BOEM has determined that the following 17 entities are legally, technically, and financially qualified to bid in the ATLW–10 auction, pursuant to 30 CFR 585.107 and 585.108:

Company name	Company No.
Atlantic Shores Offshore Wind, LLC	15092
Avangrid Renewables, LLC	15019
BP Central Atlantic Offshore Wind LLC ..	15195
Corio USA Projectco LLC	15182
energyRE Offshore Wind Holdings, LLC ..	15171
Equinor Wind US LLC	15058
Invenergy Central Atlantic Offshore LLC ..	15193
OW North America Ventures LLC	15133
Reventus Power Central Atlantic, LLC ...	15194
RWE Offshore US CATL, LLC	15190
Seaglass Offshore Wind II, LLC	15155
Shell New Energies US LLC	15140
TotalEnergies Renewables USA, LLC	15136
US Mainstream Renewable Power Inc ...	15089
US Wind Inc	15023
Vineyard Central Atlantic LLC	15192
Virginia Electric and Power Company ...	15042

a. *Affiliated Entities*: On the Bidder's Financial Form (BFF), discussed in sections III(a)(i) and X below, eligible bidders must list any other eligible bidders with whom they are affiliated. For the purpose of identifying affiliated entities, a bidding entity is any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity) that is participating in the same auction. BOEM considers bidding entities to be affiliated when:

i. They own or have common ownership of more than 50 percent of the voting securities, or instruments of ownership or other forms of ownership, of another bidding entity. Ownership of less than 10 percent of another bidding entity constitutes a presumption of non-control that BOEM may rebut.

ii. They own or have common ownership of between 10 and 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another bidding entity, and BOEM

determines that there is control upon consideration of factors including the following:

a. The extent to which there are common officers or directors.

b. With respect to the voting securities, or instruments of ownership or other forms of ownership: The percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other bidding entities, if a bidding entity is the greatest single owner, or if there is an opposing voting bloc of greater ownership.

c. Shared ownership, operation, or day-to-day management of a lease, grant, or facility, as those terms are defined in BOEM's regulations at 30 CFR 585.113.

iii. They are both direct, or indirect, subsidiaries of the same parent company.

iv. With respect to any lease(s) offered in this auction, they have entered into an agreement prior to the auction regarding the shared ownership, operation, or day-to-day management of such lease.

v. Other evidence indicates the existence of power to exercise control, such as evidence that one bidding entity has power to exercise control over the other, or that multiple bidders collectively have the power to exercise control over another bidding entity or entities.

Affiliated entities are not permitted to compete against each other in the auction. Where two or more affiliated entities have qualified to bid in the auction, the affiliated entities must decide prior to the auction which one (if any) will participate in the auction. If two or more affiliated entities attempt to participate in the auction, BOEM will disqualify those bidders from the auction.

III. Deadlines and Milestones for Bidders

This section describes the major deadlines and milestones in the auction process from publication of this FSN to execution of a lease issued pursuant to this sale.

a. *FSN Waiting Period*: During the period between FSN publication and the lease auction, qualified bidders must take several steps to remain eligible to participate in the auction.

i. *Bidder's Financial Form*: Each bidder must submit a BFF to BOEM to participate in the auction. The BFF must include each bidder's Conceptual Strategy for each bidding credit for which that bidder wishes to be considered. BOEM must receive each bidder's BFF on or before July 12, 2024,

and it is each bidder's responsibility to ensure BOEM's timely receipt. If a bidder does not submit a BFF by this deadline, BOEM, in its sole discretion, may grant an extension to that bidder only if BOEM determines the bidder's failure to timely submit a BFF was caused by events beyond the bidder's control. The BFF can be downloaded at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>. Once BOEM has processed a bidder's BFF, the bidder is allowed to log into pay.gov and submit a bid deposit. For purposes of this auction, BOEM will not consider BFFs submitted for previous lease sales. An original signed BFF may be mailed to BOEM's Office of Renewable Energy Programs. A signed copy of the form may be submitted in PDF format to renewableenergy@boem.gov. A faxed copy will not be accepted. BFF submissions should be accompanied with a transmittal letter on company letterhead. The BFF must be executed on paper with a wet signature or with a digital signature affixed by an authorized representative listed on the bidder's current legal qualification card on file with BOEM, subject to 18 U.S.C. 1001 (Fraud and False Statements). Further information about the BFF can be found in the "Bidder's Financial Form" section X of this notice.

ii. *Bid Deposit*: Once BOEM has processed a BFF and provided the appropriate information to the Office of Natural Resources Revenue (ONRR), ONRR will populate the Bid Deposit Forms and notify the bidders of access to pay.gov for the bid deposits. The bidder must log into <https://www.pay.gov> to submit a bid deposit. To participate in the mock auction and the monetary auction, each qualified bidder must provide a bid deposit of \$5,000,000 no later than July 29, 2024. BOEM will grant extensions to this deadline only if BOEM, in its sole discretion, determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control. Further information about bid deposits can be found in the "Bid Deposit" section XI of this notice. In accordance with 30 CFR 585.222(e), BOEM will send a written notice of its decision to accept or reject bids to all bidders whose deposits we hold.

b. *Conducting the Auction*:

i. *Affirmative Action*: Prior to bidding in the monetary auction, each bidder must file the Equal Opportunity Affirmative Action Representation Form BOEM-2032 (February 2020, available on BOEM's website at <http://www.boem.gov/BOEM-2032/>) and the Equal Opportunity Compliance Report Certification Form BOEM-2033

(February 2020, available on BOEM's website at <http://www.boem.gov/BOEM-2033/>) with the BOEM Office of Renewable Energy Programs. The forms can be submitted digitally to renewableenergy@boem.gov or mailed to the BOEM Office of Renewable Energy Programs. This certification is required by 41 CFR part 60 and Executive Order (E.O.) 11246, issued September 24, 1965, as amended by E.O. 11375, issued October 13, 1967, and by E.O. 13672, issued July 21, 2014. Both forms must be on file with BOEM for the bidder(s) prior to the execution of any lease contract.

ii. *Notification of Eligibility for Bidding Credits*: BOEM will notify each bidder of its eligibility for bidding credits prior to the Mock Auction.

iii. *Mock Auction*: BOEM will hold a Mock Auction on August 12, 2024, beginning at 9:00 a.m. EDT, which is open only to qualified bidders who have met the requirements and deadlines for auction participation, including submission of the bid deposit. The Mock Auction is intended to give bidders an opportunity to clarify auction rules, test the functionality of the auction software, and identify any potential issues that may arise during the auction.

iv. *The Auction*: On August 14, 2024, BOEM, through its contractor, will commence the multiple-factor auction. The first round of the auction will start at 9:00 a.m. EDT. The auction will proceed electronically according to a schedule to be distributed by the BOEM Auction Manager at the beginning of the auction, subject to any revisions (which will be communicated to bidders during the auction). BOEM anticipates that the auction will last one or two business days, but the auction may continue for additional business days, as necessary, until the auction ends in accordance with the procedures described in the "Auction Procedures" section of this notice.

v. *Announce Provisional Winners*: BOEM will announce the provisional winners of the lease sale after the auction ends.

c. *From the Auction to Lease Execution*:

i. *Refund Non-Winners*: Once the provisional winners have been announced, BOEM will provide the non-winners with a written explanation of why they did not win and will return their bid deposits.

ii. *Department of Justice (DOJ) Review*: DOJ will have 30 days in which to conduct an antitrust review of the auction, pursuant to 43 U.S.C. 1337(c).

iii. *Delivery of the Lease*: BOEM will send three lease copies to each

provisional winner, with instructions on how to execute the lease. Once the lease has been fully executed, a provisional winner becomes an auction winner. The first year's rent is due 45 calendar days after the auction winners receive the lease copies for execution.

iv. *Return the Lease:* Within ten business days of receiving the lease copies, the auction winners must post financial assurance, pay any outstanding balance of their winning bids (*i.e.*, winning cash bid less applicable bid deposits), and sign and return the three executed lease copies. The winners may request extensions and BOEM may grant such extensions if BOEM determines the delay was caused by events beyond the requesting winner's control, pursuant to 30 CFR 585.224(e).

v. *Execution of Lease:* Once BOEM has received the signed lease copies and verified that all other required materials have been received, BOEM will make a final determination regarding its issuance of the leases and will execute the leases, if appropriate.

IV. Areas Offered for Leasing

The two Lease Areas included in this FSN are the same size and orientation as described in the Proposed Sale Notice (PSN). BOEM's designation of the two Lease Areas offered in the FSN is informed by extensive coordination with BOEM's intergovernmental task force members, consultation and engagement with Tribes, stakeholder engagement, a partnership with NOAA's NCCOS to utilize spatial modeling to inform the identification of WEAs, and

consideration of the 42 comments that BOEM received in response to the PSN. The two areas BOEM is offering for lease are: Lease Area A–2, OCS–A 0557, which consists of 101,443 acres and is approximately 26.4 nm from the mouth of the Delaware Bay; and Lease Area C–1, OCS–A 0558, which consists of 176,505 acres and is approximately 35 nm from the mouth of the Chesapeake Bay.

Descriptions of the proposed Lease Areas can be found in Addendum A of the proposed leases, which can be found on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>. The areas available for lease, as listed in Table 1, will be auctioned in a single auction.

TABLE 1—ATLW–10 FINAL LEASE AREAS

Lease area name	Lease area ID	Acres
A–2	OCS–A 0557	101,443
C–1	OCS–A 0558	176,505
<i>Total</i> .....	.....	277,948

a. *Map of the Area for Leasing:* A map of the lease areas, and GIS spatial files X, Y (eastings, northings) UTM Zone 18, NAD83 Datum, and geographic X, Y (longitude, latitude), NAD83 Datum can be found on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>.

V. Lease Stipulations

BOEM is including several lease stipulations in Addendum C of each lease related to reporting requirements, avoiding and minimizing potential future user conflicts and environmental impacts, project labor agreements, national security, and project design.

a. *Reporting requirements:* BOEM is including stipulations similar to those found in previous leases requiring a semi-annual progress report from lessees and regular engagement with Tribes and parties that may be affected by lessees' activities on the OCS. The lease stipulations require working with BOEM to identify: Tribes that have cultural and/or historical ties to the Lease Areas, and potentially affected parties; coastal communities; commercial and recreational fishing industries and stakeholders; educational and research institutions; environmental and public interest NGOs; federal, state, and local agencies; mariners and the maritime industry; ocean users; submarine cable operators; and underserved communities, as defined in

section 2 of E.O. 13985. The report must identify Tribes and parties that may be affected by lessees' activities on the OCS and with whom the lessees have engaged; provide updates on engagement activities; document potential adverse effects to the interests of Tribes and parties; document how, if at all, a project has been informed or altered to address those potential effects; include feedback from engagement regarding transmission planning prior to proposing any export cable route; provide information that can be made available to the public; and include strategies to reach potentially affected individuals with Limited English Proficiency.

The stipulations include requirements for lessees to engage in ways that minimize linguistic, technological, cultural, capacity, or other obstacles. The stipulations encourage lessees to work collaboratively with governments, community leadership and organizations, and Tribes and to develop specific frameworks for capacity building.

In acknowledgment of the existing and growing consultation burden placed on many of the Tribes and parties, the stipulation also requires, to the maximum extent practicable, that lessees coordinate with one another on engagement activities. It is BOEM's intention that this requirement for lessees to coordinate their engagement

apply not only to meetings proposed by lessees, but also to reasonable requests to coordinate engagement made by Tribes and parties. Coordinated engagement among Tribes and lessees is strongly encouraged and is in addition to BOEM's responsibilities to federally recognized Tribes under E.O. 13175.

In addition, the reporting stipulation requires that the progress report incorporate separate lease requirements for the development of communication plans for Tribal governments (Native American Tribes Communications Plan), agencies (Agency Communications Plan), and fisheries (Fisheries Communications Plan). Lastly, the progress report must include an update on activities executed under any survey plan.

b. *Commercial Fisheries:* BOEM is including a stipulation that contains components of stipulations included in prior commercial leases issued by BOEM, including a requirement for a Fisheries Communications Plan.

c. *Protected Species:* Unless otherwise authorized by BOEM, Lessee's OCS activities must comply with the standards in the Project Design Criteria and Best Management Practices found in BOEM's notice (<https://www.boem.gov/sites/default/files/documents/PDCs%20and%20BMPs%20for%20Atlantic%20Data%20Collection%2011222021.pdf>) last revised on November 22, 2021. The

2021 Biological Assessment and letter of concurrence from which these measures were derived may be found here: <https://www.boem.gov/renewable-energy/state-activities/nmfs-esa-consultations>. At the Lessee's option, the Lessee, its operators, personnel, and contractors may satisfy this requirement by complying with the National Marine Fisheries Service approved measures to safeguard protected species that are most current at the time.

d. *Marine Mammal Protection Act Authorization(s)*: If the Lessee is required to obtain an authorization pursuant to section 101(a)(5) of the Marine Mammal Protection Act prior to conducting survey activities in support of plan submittal, the Lessee must provide to BOEM a copy of the authorization prior to commencing these activities.

e. *Project Labor Agreements (PLAs) and Supply Chain*: BOEM is committed to workforce safety and the establishment of a durable domestic supply chain that can sustain the U.S. offshore wind energy industry, including for the leases offered in this sale. To advance these goals, BOEM is including two lease stipulations, one that encourages construction efficiency for projects and one that contributes towards establishing a domestic supply chain:

i. The first stipulation requires lessees to make every reasonable effort to enter into a PLA covering the construction stage of any project for the Lease Areas.

ii. The second stipulation requires lessees to establish a Statement of Goals in which the Lessee describes its plans for contributing to the creation of a robust and resilient U.S.-based offshore wind industry supply chain that would facilitate this or other renewable energy projects permitted by BOEM. The Lessee is required to provide regular progress updates on the achievement of those goals to BOEM, and BOEM will make those updates publicly available.

f. *Research Site Access*: This stipulation makes explicit that BOEM, its designated representative, or any entity to which BOEM provides access retains the right to access the Lease Area for purposes of future research. This provision does not limit the Lessor's authority to access the lease for other purposes, including, but not limited to, inspections conducted pursuant to 30 CFR 285.822.

g. *Archaeological Survey Requirements*: This stipulation requires that the Lessee provide to BOEM, in the associated plan submissions, a description of the methods it will use to conduct archaeological surveys in support of plans (*i.e.*, Site Assessment

Plan (SAP) and/or COP), in addition to the survey results. The Lessee is required to coordinate a Tribal pre-survey meeting with Tribes that have cultural and/or historical ties to the Lease Area, and the Lessee must work with BOEM to identify such Tribes. In the post-review discovery clauses, the stipulation requires that, in the event of an unanticipated discovery of a potential archaeological resource, the Lessee will immediately halt bottom-disturbing activities occurring within 305 meters (1,000 feet) or less of the discovery and that the avoidance distance must be calculated from the maximum discernible extent of the archaeological resource.

h. *Foreign Interest*: To protect national defense capabilities and military operations, BOEM is requiring the Lessee to provide to DoD specific information about the personnel allowed to access the wind turbine structures and associated data systems. That information includes the names of entities or persons having a direct ownership interest in an offshore wind facility, as well as any changes in ownership interests; and the names of the material vendors, entities, and persons with which the Lessee will potentially execute contracts to perform construction, supply turbines or other components, or conduct construction and operational activities at the facility. In addition, the Lessee must resolve DoD's security concerns before it allows access to the site by foreign persons or representatives of foreign entities for which DoD has raised concerns and before the Lessee uses wind turbines or other permanent on-site equipment manufactured by such an entity.

i. *Notice of Assignment to the Committee on Foreign Investment in the United States (CFIUS)*: Under BOEM's regulations, a Lessee must be one of the following: (1) a citizen or national of the United States; (2) an alien lawfully admitted for permanent residence in the United States, as defined in 8 U.S.C. 1101(a)(20); (3) a private, public, or municipal corporation organized under the laws of any State of the United States, the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction; (4) an association of such citizens, nationals, resident aliens, or corporations; (5) an Executive Agency of the United States, as defined in 5 U.S.C. 105; (6) a State of the United States; or (7) a political subdivision of States of the United States. BOEM is including a stipulation that requires any proposed assignee of the lease that is a foreign-controlled business entity under the regulations at 31 CFR part 800 to provide joint notice, with the Lessee/

assignor, to CFIUS of the proposed leasing transaction, in accordance with applicable regulations at 31 CFR part 800, subpart D, and provide a copy of the notice to the DoD. In addition, approval of any assignment of lease interest to a foreign-controlled business entity under 31 CFR part 800 is subject to this CFIUS notice stipulation. Such assignments would take place only after CFIUS provides notice that it has concluded all necessary reviews under section 721 of the Defense Production Act of 1950, as amended, with respect to the leasing decision or assignment.

j. *Transmission Planning*: The Lessee must—to the extent that it is technically and economically practical or feasible—consider the use of shared cable corridors, regional transmission systems, meshed systems, or other mechanisms for transmission facilities proposed in a COP. Such consideration must be done in accordance with stipulation 3.1.1, which requires the Lessee to engage with Tribes and parties regarding transmission planning prior to proposing any export cable route. The foregoing does not prevent the Lessee from proposing the use of transmission systems traditionally constructed in a Project easement in any COP that the Lessee submits; nor does it prevent BOEM from requiring in a COP approval the use of cable corridors, regional transmission systems, meshed systems, or other mechanisms for transmission facilities, if deemed technically and economically practical or feasible by BOEM.

k. *NASA Operations (Lease OCS-A 0558)*: NASA and the Missile Defense Agency identified potential impacts to operations originating from the Wallops Island Flight Facility. BOEM has included stipulations in Lease OCS-A 0558 to avoid and minimize this potential conflict with wind energy development. In response to public comment, BOEM worked with NASA to provide additional clarification on the type and frequency of NASA activities expected to impact the lease area, the affected portions of the lease area, and the circumstances necessitating suspension of operations and/or evacuation. The additional information is found on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>.

l. *Siting Conditions (Lease OCS-A 0558)*: BOEM has included lease stipulations addressing surface structure layout and orientation based on input from the U.S. Coast Guard to avoid and minimize potential vessel navigation issues as a result of Lease OCS-A 0558 being adjacent to existing lease OCS-A 0483. An additional stipulation has

been added to avoid and minimize impacts to the existing Dunant cable within Lease Area OCS-A 0558.

VI. Potential Future Restrictions

a. *Potential Future Restrictions to Mitigate Potential Conflicts with Department of Defense Activities:* Those interested in bidding should be aware of potential conflicts with DoD's existing uses of the OCS. BOEM coordinates with DoD throughout the leasing process and the Military Aviation and Installation Assurance Siting Clearinghouse (Clearinghouse) conducted a DoD assessment of the Call Area. The assessment identified the following potential issues that may require mitigation. Lessees will be expected to coordinate with the Clearinghouse to assess and mitigate the impact on DoD activities as they design their proposed facilities.

i. *Air Surveillance and Radar:* The North American Aerospace Defense Command (NORAD) mission may be affected by the development of the Lease Area(s). Considering both the expected height of offshore turbines and future cumulative wind turbine effects, adverse impacts can be mitigated through the use of Radar Adverse-impact Management (RAM)¹ and overlapping radar coverage. For projects where RAM mitigation is acceptable, BOEM anticipates including the following project approval conditions:

(1) Lessee will notify NORAD when the project is within 30–60 days of completion of commissioning of the last wind turbine generator (WTG) (meaning every WTG in the Project is installed with potential for blade rotation), and again when the project is complete and operational, for RAM scheduling;

(2) Lessee will contribute funds to DoD in the amount of no less than \$80,000 toward the cost of DoD's execution of the RAM procedures for each radar system affected; and

(3) Lessee will curtail wind turbine operations for national security or defense purposes as described in the lease.

ii. *Advanced Dynamic Aircraft Measurement System (ADAMS) operations:* The operation of wind turbines within Lease Area OCS-A 0558 (C-1) may interfere with the operations of the Advanced Dynamic Aircraft Measurement System (ADAMS), located at Naval Air Station Patuxent River, Maryland.

Should interference and negative impacts on ADAMS be identified as a

result of a Lessee's operations on Lease OCS-A 0558, BOEM may require the Lessee as a future condition of approval to work with the Department of Defense (DoD) to mitigate impacts to ADAMS. The extent of impact, if any, is not currently known and DoD is undertaking modeling and data collection to assess impacts using the turbines constructed on the existing, neighboring Lease OCS-A 0483.

Expected mitigation for interference with ADAMS caused by wind turbine operation is currently limited to curtailment of turbine operations during test events. Depending on the degree of impact and availability of additional mitigations, BOEM may require the Lessee to curtail operation of the wind facility to support ADAMS operation, if DoD determines curtailment is required.

DoD projects curtailment requirements to be up to 1750 scheduled hours per year. This estimate is based on assumptions that can be refined as more information becomes available. Assumptions include:

- DoD projections for research, development, test, and evaluation demands on ADAMS;
- interference from a wind facility would occur every time a test is scheduled (as opposed to only during periods when atmospheric ducting coincides with ADAMS operations and interference is possible);
- the Lessee has limited flexibility to continue or resume power generation once the curtailment is scheduled with the power grid operator in the event ADAMS operations are canceled or suspended;
- Power grid scheduling assumptions include: (1) curtailment must be scheduled at least 72 hours prior to the ADAMS event; (2) curtailment cannot be canceled within the 24-hour window prior to the scheduled event; and (3) curtailment hours cannot be adjusted within the 72-hour window prior to the scheduled event.

The actual number of ADAMS operating hours executed will be less than scheduled but may not be known until less than 24 hours in advance of the ADAMS event. If the future Lessee is not constrained by the grid operator (as in the power grid assumptions above), the number of hours of curtailment could be substantially less.

Actual curtailment requirements will be subject to validation by DoD of the project's effects on ADAMS and may increase or decrease based upon national defense mission requirements. Alternative mitigation measures may also be developed prior to construction and operation of the project.

iii. *U.S. Air Force and U.S. Air Force Air National Guard operations:* The U.S. Air Force noted that the airspace above both proposed Lease Areas has a floor of 1,000 feet above sea level. The U.S. Air Force requested BOEM limit structure heights to no higher than 1,000 feet above sea level.

BOEM will further coordinate with DoD and the Lessee to deconflict potential impacts throughout the project design and COP review stage, which may result in adding mitigation measures or terms and conditions as part of any COP approval. BOEM may require the Lessee to enter into an agreement with DoD to implement any conditions and mitigate any identified impacts.

b. *Potential Future Restrictions within Significant Sediment Resource Areas:* Potential bidders are advised that BOEM has developed sand resource areas in aliquots offshore the Mid Atlantic (MMIS Application (<https://mmis.doi.gov/BOEMMMIS/>)). OCS sand resource areas are composed of sand deposits found on or below the surface of the OCS seabed. If it is determined that significant OCS sand resources may be impacted by a proposed activity, BOEM may require the Lessee to undertake measures deemed economically, environmentally, and technically feasible to protect the resources to the maximum extent practicable, including minimizing, avoiding, and mitigating impact to these resources. Measures may include modification of proposed transmission corridor locations. There is also potential for sand resources to exist in aliquots not currently identified. BOEM and/or the Bureau of Safety and Environmental Enforcement (BSEE) will not approve future requests for in-place decommissioning of cables in sand resource areas unless BOEM's Marine Minerals Program has determined that the cable corridor does not unduly interfere with other uses of the OCS, specifically sand resource use.

c. *Potential Future Restriction to Mitigate Potential Conflicts with Environmental Resources:* All potential bidders should be aware that site specific surveys may reveal features requiring mitigation at the COP stage. This includes sensitive benthic resources and cultural resources.

d. *Potential Future Restriction to Mitigate Potential Conflicts with Lease Area OCS-A 0557 and USCG Proposed Traffic Separation Schemes (TSS) Precautionary Areas:* Those interested in bidding should be aware that Lease Area OCS-A 0557 is spaced less than 1nm from the northern portion of the proposed Off Delaware Bay Southern

¹ RAM is the technical process designed to minimize the adverse impact of obstruction interference on a radar system.

Approach Precautionary Area, which includes the Delaware Bay Eastern Approach TSS extension lane. These areas are identified in the Final Consolidated Port Approaches Port Access Route Studies and have been included in the United States Coast Guard's Notice of Proposed Rulemaking (NPRM) for Shipping Safety Fairways Along the Atlantic Coast, published on January 19, 2024. The USCG NPRM

begins the formal process for codifying the TSS and Precautionary Areas for vessel use with the intended purpose of facilitating navigational safety. Per the United States Coast Guard's Marine Planning Guidelines outlined in the October 5, 2023, USCG Navigation and Vessel Inspection Circular NO. 02–23 Enclosure 4, the preferred recommended setback distance for any offshore structure to parallel any

International Maritime Organization routing measure is 2 nm. There is less than 2 nm spacing between the northern boundary of Lease Area OCS–A 0557 and the proposed Delaware Bay Eastern Approach TSS extension lane. Table 2 lists the sub-blocks that are within the 2 nm of the proposed Delaware Bay Eastern Approach TSS extension lane and which may be subject to mitigation measures (*i.e.*, no surface occupancy).

TABLE 2—OCS–A 0557: BLOCKS OF CONCERN

Protraction name	Protraction No.	Block No.	Sub-block
Salisbury	NJ18–05	6330	D, H.
Salisbury	NJ18–05	6331	A, B, C, D, E, F, G, H.
Salisbury	NJ18–05	6332	A, B, C, D, E, F, G, H.
Salisbury	NJ18–05	6333	E.

Maps identifying these OCS blocks and sub-blocks are available on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>.

VII. Lease Terms and Conditions

BOEM has made available the terms, conditions, and stipulations for the commercial leases that will be offered through this sale.² BOEM reserves the right to require compliance with additional terms and conditions associated with the approval of a SAP and a COP. The lease forms³ are on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>. Each lease will include the following attachments:

1. Addendum A (“Description of Leased Area and Lease Activities”);
 2. Addendum B (“Lease Term and Financial Schedule”);
 3. Addendum C (“Lease-Specific Terms, Conditions, and Stipulations”);
 4. Addendum D (“Project Easement”).
- Addenda A, B, and C provide detailed lease terms and conditions. Addendum D will be completed at the time of COP approval or approval with

modifications, should a COP be approved.

a. *Required Plans for Potential Development of Executed Leases:* To the extent required under BOEM's regulations at 30 CFR part 585, the Lessee may submit a SAP, if the Lessee intends to conduct site assessment activities under that SAP, and must submit a COP to avoid lease termination under 30 CFR 585.432(a).

VIII. Lease Financial Terms and Conditions

This section provides an overview of the required annual payments and financial assurances under the lease. Potential bidders should review the lease for more detailed information, including any changes from past practices.

a. *Rent:* Pursuant to 30 CFR 585.224(b) and 585.503, the first year's rent payment of \$3 per acre is due within 45-calendar days after the Lessee receives the unexecuted lease copies from BOEM. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease (the “Lease Anniversary”). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the Lease Area remaining undeveloped (*i.e.*, non-generating acreage). For example, for the 101,443 acres of OCS–A 0557 (A–2), the rent payment would be \$304,329 per year until commercial operations begin.

If the Lessee submits an application for relinquishment of a portion of its leased area within the first 45-calendar days after receiving the lease copies from BOEM and BOEM approves that application, no rent payment will be due on the relinquished portion of the Lease Area. Later relinquishments of

any portion of the Lease Area will reduce the Lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

A lease issued under this part confers on the Lessee the right to one or more project easements, without further competition, for the purpose of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease. A Lessee must apply for the project easement as part of the COP or SAP, as provided under subpart F of 30 CFR part 585.

The Lessee also must pay rent for any project easement associated with the lease. Rent commences on the date that BOEM approves the COP that describes the project easement (or any modification of such COP that affects the easement acreage), as outlined in 30 CFR 585.507. Annual rent for a project easement is the greater of \$5 per acre per year, or \$450 per year. If a COP revision results in increased easement acreage, BOEM will require the appropriate amount of additional rent when it approves the COP.

b. *Operating Fee:* For purposes of calculating the initial annual operating fee payment under 30 CFR 585.506, BOEM applies an operating fee rate to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first 12 months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment will be due within 90-calendar days of the commencement of commercial operations. Thereafter,

² On May 15, 2024, BOEM published in the **Federal Register** the Renewable Energy Modernization Rule (Rule), which once effective on July 15, 2024, will require updates to the lease published with this FSN. Those updates are likely to reflect changes to the timing of lease terms and the formula for calculating operating fees. After July 15, 2024, BOEM will revise the lease to conform to the Rule and will inform qualified bidders of the changes. BOEM expects no other updates or changes to the lease published with this FSN.

³ Note to potential bidders: The title and content of Section 21, *Waiver*, of Lease OCS–A 0558 has been removed and replaced with *Variance*, which is an updated provision that was included in Lease OCS–A 0557, but inadvertently omitted from Lease OCS–A 0558, in the PSN published in the **Federal Register** on December 12, 2023.

subsequent annual operating fee payments will be due on or before the Lease Anniversary.

The subsequent annual operating fee payments will be calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power

production. For the purposes of this calculation, the imputed market value will be the product of the project's annual nameplate capacity, the total number of hours in a year (8,760), the capacity factor, and the annual average price of electricity derived from a regional wholesale power price index.

For example, the annual operating fee for a 976 megawatt (MW) wind facility operating at a 40 percent capacity (*i.e.*, capacity factor of 0.4) with a regional wholesale power price of \$40 per megawatt hour (MWh) and an operating fee rate of 0.02 will be calculated as follows:

$$\text{Annual Operating Fee} = 976 \text{ MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}} \text{ Power Price} \times 0.02 = \$2,735,923.20$$

i. *Operating Fee Rate*: The operating fee rate is the share of the imputed wholesale market value of the projected annual electric power production due to ONRR as an annual operating fee. For the Lease Areas, BOEM will set the fee rate at 0.02 (2 percent) for the entire life of commercial operations.

ii. *Nameplate Capacity*: Nameplate capacity is the maximum rated electric output, expressed in MW, which the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer.

iii. *Capacity Factor*: The capacity factor relates to the amount of energy delivered to the grid during a period of time compared to the amount of energy the wind facility would have produced at full capacity during that same period of time. BOEM will set the capacity factor at 0.4 (*i.e.*, 40 percent) for the year in which the commercial operations begin and for the first 6 full years of commercial operations on the lease. At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous 5 years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor once every 5 years thereafter.

iv. *Wholesale Power Price Index*: Under 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MWh, is determined at the time each annual operating fee payment is due. For the leases offered in this sale the following table provides the price data. A similar price dataset may also be used and may be posted by BOEM at <https://www.boem.gov> for reference.

Lease area name	Wholesale power price
A-2, OCS-A 0557	PJM DPL.
C-1, OCS-A 0558	PJM DOM.

c. *Financial Assurance*: Within 10 business days after receiving the unexecuted lease copies for execution and pursuant to 30 CFR 585.515–585.516, the provisional winners must provide an initial lease-specific bond or other BOEM-approved financial assurance instrument in the amount of \$100,000. The provisional winners may meet financial assurance requirements by posting a surety bond or other financial assurance instrument as detailed in 30 CFR 585.526–585.529. BOEM encourages the provisional winners to discuss the financial assurance instrument requirements with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of all SAP, COP, and decommissioning financial assurance on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms described above can be found in Addendum “B” of the lease, which is available at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>.

IX. Bidder's Financial Form

Each bidder must submit to BOEM the information required in the BFF referenced in this FSN. A copy of the form is available at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>. BOEM recommends that each bidder designate an email address in its BFF that the bidder must use to create an account in *pay.gov* (if it has not already done so). BOEM must receive BFFs, including Conceptual Strategies, no later than July 12, 2024. If a bidder does not submit a BFF for this sale by the deadline, BOEM, in its sole discretion, may grant an extension to that bidder only if BOEM determines the bidder's failure to

timely submit a BFF was caused by events beyond the bidder's control. The BFF is required to be executed by an authorized representative listed in the bidder's qualification package on file with BOEM. BFFs submitted by bidders for previous lease sales will not satisfy the requirements of this auction.

For the ATLW-10, BOEM will accept bidders' BFFs and Conceptual Strategies electronically or by mail. Instructions for submission can be found in the BFF. The BFF must be executed on paper with a wet signature or with the application of a digital signature by an authorized representative listed on the legal qualification card currently on file with BOEM as authorized to bind the company. Winning bidders who have committed to bidding credit(s) must meet the bidding credit requirements no later than submission of their first Facility Design Report (FDR) or the applicable Lease Anniversary, whichever is sooner.

X. Bid Deposit

A bid deposit is an advance cash payment submitted to BOEM to participate in the auction. ONRR will notify the bidders that they have access to the Bid Deposit Form in *pay.gov*, and bidders must use the Bid Deposit Form on the <https://www.pay.gov> website to submit a deposit. Bidders may need to create an account in *pay.gov* to access the Bid Deposit Form and submit a deposit. Each bidder must submit a bid deposit of \$5,000,000 no later than July 29, 2024, to be eligible to bid for one lease area. Any bidder who fails to submit the bid deposit by this deadline may be disqualified from participating in the auction. BOEM will consider extensions to this deadline only if BOEM, in its sole discretion, determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.

Following the auction, provisional winners' bid deposits will be applied

against their winning cash bids. Once BOEM has announced the provisional winners, BOEM will refund bid deposits to the other bidders.

If BOEM offers a lease to a provisionally winning bidder and that bidder fails to timely return the signed lease form, establish financial assurance, or pay the balance of its bid, BOEM may retain the bidder's \$5,000,000 bid deposit. In such a circumstance, BOEM may determine which bid would have won in the absence of the bid previously determined to be the winning bid and may offer a lease to this next highest bidder if this next highest bidder is not a provisionally winning bidder of the other lease area in the auction. This process will be repeated if needed.

XI. Minimum Bid

The minimum bid is the lowest dollar amount per acre that BOEM will accept as a winning bid and is the amount at which BOEM will start the bidding in the auction. BOEM has established a minimum bid of \$100.00 per acre for this lease sale.

XII. Auction Procedures

a. *Multiple-Factor Bidding Auction:* As authorized under 30 CFR 585.220(a)(4) and 585.221(a)(6), BOEM will use a multiple-factor auction format for this lease sale. The bidding system for this lease sale will be a multiple-factor combination of monetary and non-monetary factors. The bid made by a particular bidder in each round will represent the sum of the monetary factor (cash bid) and the value of any non-monetary factors in the form of bidding credits. Bidders will be subject to a 'one-per-customer' rule, meaning that each bidder can acquire at most one lease area. BOEM will start the auction using the minimum bid price for each lease area and will increase prices incrementally until no more than one bidder remains bidding on each lease area in the auction.

In response to public comments, BOEM is revising the bidding credit percentages from those proposed in the PSN. The total bidding credits remain at 25 percent. BOEM is increasing the

credit for contributing to a fisheries compensatory mitigation fund from 8 percent to 12.5 percent, and is reducing the credit for supporting offshore wind workforce training programs or supply chain development from 17 percent to 12.5 percent. These changes reflect the potential conflicts of offshore wind with commercial fisheries and the many existing efforts of state and other federal initiatives for offshore wind workforce training and supply chain development.

For this sale, BOEM is calculating bidding credits as a percentage of the whole bid, which is a change from the method used in prior sales, where bidding credits were calculated as a percentage of the cash portion of the bid. The intended purpose of this change is to simplify the bidding credit calculation.

BOEM will grant bidding credits to bidders that commit to one or both of the following, subject to review of the bidder's BFF and Conceptual Strategy.

i. Supporting workforce training programs for the offshore wind industry or supporting the development of a domestic supply chain for the offshore wind industry, or a combination of both; or

ii. Establishing and contributing to a fisheries compensatory mitigation fund or contributing to an existing fund to mitigate potential negative impacts to commercial and for-hire recreational fisheries caused by OCS offshore wind development in the Atlantic.

These bidding credits are intended to:

i. Enhance, through training, the offshore wind workforce and/or enhance the establishment of a domestic supply chain for offshore wind manufacturing, assembly, or services, both of which will contribute to the expeditious and orderly development of offshore wind resources on the OCS; and

ii. Minimize potential economic effects on commercial fisheries impacted by potential offshore wind development, as cooperation with commercial fisheries impacted by OCS operations will enable development of the lease areas to advance.

Changes to Auction Rules: BOEM will be employing new auction software for

lease sales held in 2024. The auction format remains an ascending clock auction with multiple-factor bidding. There are five main changes to the ascending clock auction rules in the new software, as follows:

i. If a bidder decides to bid on a different lease area in a given round of the auction, it may submit a bid to reduce demand for the lease area it bid on in the previous round and, simultaneously, submit a bid to increase demand for another lease area. This allows a bidder the option to switch to another lease area if the price of the first lease area exceeds the bidder's specified bid price.

ii. Provisional winners will no longer be determined using a two-step process. The auction rules are implemented in a way such that, when the auction concludes, the bidder who remains on a lease area after the final round becomes its provisional winner. There will be no additional processing step.

iii. The auction will use a 'second price' rule. A given lease area will be won by the bidder that submitted the highest bid amount for the lease area, but the winning bidder will pay the highest bid amount at which there was competition (*i.e.*, the 'second price').

iv. Each bidder's bidding credit will be expressed directly as a percentage of the final price of the lease.

v. For sales in which bidders are allowed to bid for and potentially acquire two or more lease areas, any bid for two or more lease areas will be treated as independent bids for those lease areas, rather than as a package bid.

Changes i. through iv. listed above are applicable to the ATLW-10 sale. However, change v. to the ascending clock auction rules is inapplicable, due to the 'one-per-customer' rule.

All potential bidders should review the complete Auction Procedures for Offshore Wind Lease Sales (Version 1) located at: <https://www.boem.gov/renewable-energy/lease-and-grant-information>.

The Auction: Using an online bidding system to host the auction, BOEM will start the bidding for Leases OCS-A 0557 and OCS-A 0558 as described below.

Lease area name	Lease area ID	Acres	Minimum bid
A-2	OCS-A 0557	101,443	\$10,144,300
C-1	OCS-A 0558	176,505	17,650,500

The auction will be conducted in a series of rounds. Before each round, the auction system will announce the prices for each lease area offered in the

auction. In Round 1, there is a single price for each lease area equal to the minimum bid price (also known as the 'opening price' or 'clock price of Round

1'). Each bidder can bid, at the opening price, for one lease area. After Round 1, the bidder's "processed demand" is one for the lease area (if any) for which the

bidder bid in Round 1.⁴ The bidder's eligibility for Round 2 equals the number of lease area for which the bidder bid in Round 1.

Starting in Round 2, each lease area is assigned a range of prices for the round. The start-of-round price is the lowest price in the range, and the clock price is the highest price in the range. A bidder still eligible to bid after the previous round can either continue bidding at the new round's clock price for the same lease area for which the bidder's processed demand is one or submit a bid at any price in the range for that round to reduce demand for that lease area. A bid to reduce demand at some price indicates that the bidder is not willing to acquire that lease area at a price exceeding the specified bid price. A bidder that bids to reduce demand for a lease area can optionally bid to increase demand for the other lease area in the same round.

If an eligible bidder does not place a bid during the round for the lease area for which the bidder's processed demand is one, the auction system will consider this a request to reduce demand for that lease area at the round's start-of-round price. That bidder can nonetheless win that lease area if it is the last remaining bidder for that lease area.

After each round, the auction system processes the bids and determines each bidder's processed demand for each lease area and the posted prices for the lease areas. The bidder's eligibility for the next round equals the number of lease areas for which the bidder had a processed demand of one. If, after any round, a bidder's processed demand is zero for both lease areas, the bidder's eligibility drops to zero and the bidder can no longer bid in the auction. The posted price is the price determined for each lease area after processing of all bids for a round. If only one bidder remains on a lease area, the posted price reflects the "second price" (*i.e.*, the highest price at which there was competition for the lease area).⁵ If, after the bids for the round have been processed, there is no lease area with excess demand, the auction will end. When this occurs, each bidder with a processed demand of one for a Lease Area will become the provisional winner for that lease area. Otherwise,

the auction will continue with a new round in which the start-of-round price for each lease area equals the posted price of the previous round.

The increment by which the clock price exceeds the start-of-round price will be determined based on several factors including, but not limited to, the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease the increment as it deems appropriate.

The provisional winner of each lease area will pay the final posted price (less any applicable bidding credit) or risk forfeiting its bid deposit. A provisional winner will be disqualified if it is subsequently found to have violated auction rules or BOEM regulations, or otherwise engaged in conduct detrimental to the integrity of the competitive auction. If a bidder submits a bid that BOEM determines to be a provisionally winning bid, the bidder must sign the applicable lease documents, post financial assurance, and submit the outstanding balance (if any) of its winning bid (*i.e.*, winning bid minus the applicable bid deposit and any applicable bidding credits) within 10 business days of receiving the lease copies, pursuant to 30 CFR 585.224. BOEM reserves the right to not issue the lease to the provisionally winning bidder if that bidder fails to: timely execute three copies of the lease and return them to BOEM, timely post adequate financial assurance, timely pay the balance of its winning bid, or otherwise comply with applicable regulations or the terms of this FSN. In any of these cases, the bidder will forfeit its bid deposit and BOEM reserves the right to offer a lease to the next highest eligible bidder as determined by BOEM.

BOEM will publish the names of the provisional winners of the lease areas and the associated prices shortly after the conclusion of the sale. Full bid results, including round-by-round results of the entire sale, will be published on BOEM's website after a review of the results and announcement of the provisional winners.

Additional Information Regarding the Auction Format:

i. **Authorized Individuals and Bidder Authentication:** An entity that is eligible to participate in the auction will identify on its BFF up to three individuals who will be authorized to bid on behalf of the company, including their names, business telephone numbers, and email addresses. All individuals will log into the auction system using *Login.gov*. Prior to the auction, each individual listed on the BFF form must obtain a Fast Identify

Online (FIDO) compliant security key,⁶ and must register this security key on *Login.gov* using the same email address that was listed in the BFF. The *Login.gov* registration, together with the FIDO-compliant security key, will enable the individual to log into the auction system. BOEM will provide information on this process on its website.

After BOEM has processed the bid deposits, the auction contractor will send an email to the authorized individuals, inviting them to practice logging into the auction system on a specific day in advance of the mock auction. The *Login.gov* login process, along with the authentication process for the auction helpdesk, will also be tested during the mock auction.

If an eligible bidder fails to submit a bid deposit or does not participate in the first round of the auction, BOEM will deactivate that bidder's login information.

ii. **Timing of Auction:** The auction will begin at 9:00 a.m. EDT on August 14, 2024. Bidders will be able to log into the auction system beginning 30 minutes before the start of the auction. BOEM recommends that bidders log in earlier than 9:00 a.m. EDT on that day to ensure that any login issues are resolved prior to the start of the auction.

iii. **Messaging Service:** BOEM and its auction contractors will use the auction system's messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM could change the schedule at any time, including during the auction. If BOEM changes the schedule during the auction, it will use the messaging service to notify bidders that a revision has been made and will direct bidders to the relevant page. BOEM will also use the messaging service for other updates during the auction.

iv. **Bidding Rounds:** Bidders are allowed to place bids or to change their bids at any time during the bidding round. At the top of the bidding page, a countdown clock shows how much time remains in each round. Bidders will have until the end of the round to place bids. Bidders should do so according to the procedures described in this FSN and the Auction Procedures

⁴ Bidders specify their demand for a lease area with either a 0 or 1 in the auction system. A demand of 1 indicates the lease area that they are bidding on. Processed demand is the demand, either 0 or 1 of a bidder for a lease area following the processing of the bids for the round.

⁵ The *Auction Procedures for Offshore Wind Lease Sales* provides details on how bids are prioritized and processed.

⁶ FIDO keys are produced by many manufacturers, such as Yubico and Google. They are widely available and can easily be purchased from Amazon, Best Buy, Walmart, or any other seller of electronics. The latest generation of the FIDO standard is FIDO2, and each authorized individual should obtain a key compliant with the FIDO2 authentication standard. FIDO keys are typically inserted into a computer's USB port, so the authorized individual should obtain a FIDO key compatible with their computer (USB-A or USB-C) or a USB adapter, as necessary.

for Offshore Wind Lease Sales.

Information about the round results will be made available only after the round has closed, so there is no strategic advantage to placing bids early or late in the round.

The Auction Procedures for Offshore Wind Lease Sales elaborate on the auction procedures described in this FSN. In the event of any inconsistency between the Auction Procedures for Offshore Wind Lease Sales, the Bidder Manual, and the FSN, the FSN is controlling.⁷

v. *Alternate Bidding Procedures:* Redundancy is the most effective way to mitigate technical and human issues during an auction. BOEM strongly recommends that bidders consider authorizing more than one individual to bid in the auction—and confirming during the mock auction that each individual is able to access the auction system. A mobile hotspot or other form of wireless access is helpful if a company's main internet connection should fail. As a last resort, an authorized individual facing technical issues may request to submit its bid by telephone. To be authorized to place a telephone bid, an authorized individual must call the help desk number listed in the auction manual before the end of the round. BOEM will authenticate the caller's identity, including requiring the caller to provide a code from the software token. The caller must also explain the reasons why a telephone bid needs to be submitted. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using this alternate telephonic bidding procedure. The auction help desk requires codes from the Google Authenticator application (app) as part of its procedure for identifying individuals who call for assistance. *Prior to the auction*, all individuals listed on the BFF should download the Google Authenticator™ mobile app⁸ onto their smartphone or tablet.⁹ The first time the individual logs into the auction system, the system will provide a QR token to be read into the Google Authenticator app. This token is unique to the individual and enables the Google Authenticator app to generate time-sensitive codes that will be recognized by the auction system. When an individual calls the auction help desk,

the current code from the app must be provided to the help desk representative as part of the user authentication process. BOEM will provide information on this process on its website.

b. *12.5 Percent Bidding Credit for Workforce Training or Supply Chain Development or a Combination of Both:* This bidding credit allows a bidder to receive a credit of 12.5 percent of its bid in exchange for a commitment to make a qualifying monetary contribution ("Contribution"), in the same amount as the bidding credit received, to programs or initiatives that support workforce training programs for the U.S. offshore wind industry or development of a U.S. domestic supply chain for the offshore wind industry, or both, as described in the BFF Addendum and the lease. To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a Conceptual Strategy as described in the BFF Addendum.

i. The Contribution to workforce training must result in a better trained and/or larger domestic offshore wind workforce that provides for more efficient operations via increasing the supply of fully trained personnel. Training of existing Lessee employees, Lessee contractors, or employees of affiliated entities will not qualify.

ii. The Contribution to domestic supply chain development must result in overall benefits to the U.S. offshore wind supply chain available to all potential purchasers of offshore wind services, components, or subassemblies, not solely the Lessee's project; and either: (i) the demonstrable development of new domestic capacity (including vessels) or the demonstrable buildout of existing capacity; or (ii) an improved offshore wind domestic supply chain by reducing the upfront capital or certification cost for manufacturing offshore wind components, including the building of facilities, the purchasing of capital equipment, and the certifying of existing manufacturing facilities.

iii. Contributions cannot be used to satisfy private cost shares for any federal tax or other incentive programs where cost sharing is a requirement. No portion of the Contribution may be used to meet the requirements of any other bidding credits for which the Lessee qualifies.

iv. Bidders interested in obtaining a bidding credit could choose to contribute to workforce training programs, domestic supply chain initiatives, or a combination of both. The Conceptual Strategy must describe verifiable actions that the Lessee will take that would allow BOEM to confirm

compliance when the documentation for satisfying the bidding credit is submitted. The Contribution must be tendered in full, and the Lessee must provide documentation evidencing it has made the Contribution and complied with applicable requirements, no later than the date the Lessee submits its first FDR.

v. Contributions to workforce training must promote and support one or more of the following purposes: (i) Union apprenticeships, labor management training partnerships, stipends for workforce training, or other technical training programs or institutions focused on providing skills necessary for the planning, design, construction, operation, maintenance, or decommissioning of offshore wind energy projects in the United States; (ii) Maritime training necessary for the crewing of vessels to be used for the construction, servicing, and/or decommissioning of wind energy projects in the United States; (iii) Training workers in skills or techniques necessary to manufacture or assemble offshore wind components, subcomponents, or subassemblies. Examples of areas involving these skills and techniques include welding; wind energy technology; hydraulic maintenance; braking systems; mechanical systems, including blade inspection and maintenance; or computers and programmable logic control systems; (iv) Tribal offshore wind workforce development programs or training for employees of an Indian Economic Enterprise¹⁰ in skills necessary in the offshore wind industry; or (v) Training in any other job skills that the Lessee can demonstrate are necessary for the planning, design, construction, operation, maintenance, or decommissioning of offshore wind energy projects in the United States.

vi. Contributions to domestic supply chain development must promote and support one or more of the following: (i) Development of a domestic supply chain for the offshore wind industry, including manufacturing of components and subassemblies and the expansion of related services; (ii) Domestic Tier 2 and Tier 3 offshore wind component suppliers and domestic Tier-1 supply chain efforts, including quay-side fabrication;¹¹ (iii) Technical assistance

⁷ The Bidder Manual describes use of the auction platform and is provided to the auction participants in advance of the auction.

⁸ Google Authenticator must be installed from either the Apple App Store or the Google Play Store.

⁹ Installing the Google Authenticator app is only required if the app has not already been installed on the smartphone or tablet.

¹⁰ [https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18\(Reload\).pdf](https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18(Reload).pdf).

¹¹ Tier-1 denotes the primary offshore wind components such as the blades, nacelles, towers, foundations, and cables. Tier 2 subassemblies are the systems that have a specific function for a Tier 1 component. Tier 3 subcomponents are commonly

grants to help U.S. manufacturers re-tool or certify (e.g., ISO-9001) for offshore wind manufacturing; (iv) Development of Jones Act-compliant vessels for the construction, servicing, and/or decommissioning of wind energy projects in the United States; (v) Purchase and installation of lift cranes or other equipment capable of lifting or moving foundations, towers, and nacelles quayside, or lift cranes on vessels with these capabilities; (vi) Port infrastructure directly related to offshore wind component manufacturing or assembly of major offshore wind facility components; (vii) Establishing a new or existing bonding support reserve or revolving fund available to all businesses providing goods and services to offshore wind energy companies, including disadvantaged businesses and/or Indian Economic Enterprises; or (viii) Other supply chain development efforts that the Lessee can demonstrate advance the manufacturing of offshore wind components or subassemblies or the provision of offshore wind services in the United States.

vii. *Documentation*: If a lease is issued pursuant to a winning bid that includes a bidding credit for workforce training or supply chain development, the Lessee is required to provide documentation showing that the Lessee has met the financial commitment before the Lessee submits the first FDR for the lease. The documentation must allow BOEM to objectively verify the amount of the Contribution and the beneficiary(ies) of the Contribution.

At a minimum, the documentation must include: all written agreements between the Lessee and beneficiary(ies) of the Contribution, which must detail the amount of the Contribution(s) and how it will be used by the beneficiaries of the Contribution(s) to satisfy the goals of the bidding credit for which the Contribution was made; all receipts documenting the amount, date, financial institution, and the account and owner of the account to which the Contribution was made; and sworn statements by the entity that made the Contribution and the beneficiary(ies) of the Contribution attesting that all information provided in the above documentation is true and accurate. The documentation will need to describe how the funded initiative or program has advanced, or is expected to advance, U.S. offshore wind workforce training or supply chain development. The documentation must also provide qualitative and/or quantitative

information that includes the estimated number of trainees or jobs supported, or the estimated leveraged supply chain investment resulting or expected to result from the Contribution. The documentation will need to contain any information called for in the Conceptual Strategy that the Lessee submitted with its BFF and to allow BOEM to objectively verify (i) the amount of the Contribution and the beneficiary(ies) of the Contribution, and (ii) compliance with the bidding credit criteria provided in Addendum “C” of the lease. If the Lessee’s implementation of its Conceptual Strategy changes due to market needs or other factors, the Lessee must explain the changed approach. BOEM reserves all rights to determine that the bidding credit has not been satisfied if changes from the Lessee’s Conceptual Strategy result in the Lessee not meeting the criteria for the bidding credit described in Addendum “C” of the lease.

viii. *Enforcement*: The commitment for the bidding credit will be made in the BFF and will be included in a lease addendum that will bind the Lessee and all future assignees of the lease. If BOEM were to determine that a Lessee or assignee had failed to satisfy the requirements of the bidding credit, or if a Lessee were to relinquish or otherwise fail to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the lease Effective Date. The interest rate will be the underpayment interest rate identified by ONRR. The Lessee will not be required to pay said amount if the Lessee satisfied its bidding credit requirements but failed to develop the lease by the tenth Lease Anniversary. BOEM could, at its sole discretion, extend the documentation deadline beyond the first FDR submission or extend the lease development deadline beyond the 10-year timeframe.

c. *12.5 Percent Bidding Credit for Fisheries Compensatory Mitigation Fund*: The second bidding credit will allow a bidder to receive a credit of 12.5 percent of its bid in exchange for a commitment to establish and contribute to a fisheries compensatory mitigation fund, or to contribute to a similar existing fund, to compensate for potential negative impacts to commercial and for-hire recreational fisheries. The term “commercial fisheries” refers to commercial and processing businesses engaged in the act of catching and marketing fish and shellfish for sale from the Atlantic. The term “for-hire recreational fisheries” refers to charter and headboat fishing

operations involving vessels-for-hire engaged in recreational fishing in the Atlantic that are hired for a charter fee by an individual or group of individuals for the exclusive use of that individual or group of individuals.

The Fund must compensate commercial and for-hire recreational fishers for gear loss or damage, as well as income loss claims incurred as a result of any stage of offshore wind project development (pre-construction, construction, operations, and decommissioning) resulting from this lease. Loss claims may also result from impacts from the development of easements associated with this lease and/or the conduct of surveys on this lease before the establishment of the Fund. Funds determined to be in excess of those needed to compensate for gear loss or damage and income loss as a result of lease development, based on actuarial accounting, may be used to:

- Support regional fisheries compensatory mitigation efforts for other Atlantic OCS offshore wind projects,
- Offset the cost of gear and navigational aid upgrades and other transitions for operating within a wind farm; or
- Promote participation of fishers and fishing communities in the offshore wind project development process or other programs that better enable the fishing and offshore wind industries to co-exist.

Lessees are encouraged to coordinate with other lessees to establish or contribute to a regional fund. The regional fund should ensure lease-specific claims are accounted for.

To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a Conceptual Strategy as described in the BFF Addendum.

The Conceptual Strategy must describe the actions that the lessee intends to take that will allow BOEM to verify compliance when the lessee seeks to demonstrate satisfaction of the requirements for the bidding credit. The lessee is required to provide documentation showing that the lessee has met the commitment and complied with the applicable bidding credit requirements before the lessee submits the lease’s first FDR or before the fifth Lease Anniversary, whichever is sooner.

Any fund established or selected by the lessee to meet this bidding credit requirement must include a process for evaluating the actuarial status of funds at least every 5 years and publicly report information on fund disbursement and administrative costs at least annually.

available items that are combined into Tier 2 subassemblies, such as motors, bolts, and gears.

The fisheries compensatory mitigation fund must be independently managed by a third party and must include trustees or board members from fishing stakeholder groups. The fund must be designed with fiduciary governance and strong internal controls while minimizing administrative expenses. The Contribution may be used for fund startup costs, but the Fund should minimize costs by leveraging existing processes, procedures, and information from BOEM's draft Fisheries Mitigation Guidance, the Eleven Atlantic States' Fisheries Mitigation Project, or other sources.

Documentation: If a lease is awarded pursuant to a winning bid that includes a fisheries compensatory mitigation fund bidding credit, the lessee must provide written documentation to BOEM that demonstrates that it completed the fund Contribution before it submits the lease's first FDR or before the fifth Lease Anniversary, whichever is sooner. The documentation must enable BOEM to objectively verify the Contribution has met all applicable requirements as outlined in Addendum "C" of the lease. At a minimum, this documentation must include:

a. The procedures established to compensate for gear loss or damage and lost fishing income resulting from any stage of offshore wind development (pre-construction, construction, operation, and decommissioning) adherent to the requirements above;

b. The fisheries compensatory mitigation fund charter, including the governance structure, audit and public reporting procedures, and standards for paying compensatory mitigation for impacts to fishers from all phases of offshore development adherent to the requirements above;

c. All receipts documenting the amount, date, financial institution, and the account and owner of the account to which the Contribution was made; and

d. Sworn statements by the entity that made the Contribution, attesting to:

i. The amount and date(s) of the Contribution;

ii. That the Contribution is being (or will be) used in accordance with the bidding credit requirements in the lease; and

iii. That all information provided is true and accurate.

The documentation must contain any information specified in the Conceptual Strategy that was submitted with the BFF. If the lessee's implementation of its Conceptual Strategy changes due to market needs or other factors, the lessee must explain this change. BOEM reserves the right to determine that the bidding credit has not been satisfied if

changes from the lessee's Conceptual Strategy result in the lessee not meeting the criteria for the bidding credit described in Addendum "C" of the lease.

Enforcement: The commitment to the fisheries compensatory mitigation fund bidding credit will be made in the BFF. It will be included in Addendum "C" of the lease and will bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy the commitment at the time the first FDR is submitted, or by the fifth Lease Anniversary, whichever is sooner, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the lease Effective Date. The interest rate will be the underpayment interest rate identified by ONRR. The lessee will not be required to pay said amount if the lessee satisfied its bidding credit requirements by the time the first FDR is submitted, or the fifth Lease Anniversary, whichever is sooner. BOEM may, at its sole discretion, extend the documentation deadline beyond the first FDR or beyond the 5-year timeframe.

XIII. Rejection or Non-Acceptance of Bids

BOEM reserves the right to reject any and all bids that do not satisfy the requirements and rules of the auction, this FSN, or applicable regulations and statutes.

XIV. Anti-Competitive Review

Bidding behavior in this lease sale is subject to federal antitrust laws. Following the auction, but before the acceptance of bids and the issuance of the lease, BOEM will "allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of [the] lease sale." 43 U.S.C. 1337(c)(1). If a provisionally winning bidder is found to have engaged in anti-competitive behavior in connection with this lease sale, BOEM will reject its provisionally winning bid. Compliance with BOEM's auction procedures and regulations is not an absolute defense to violations of antitrust laws.

Anti-competitive behavior determinations are fact-specific. Such behavior may manifest itself in several different ways, including, but not limited to:

1. An express or tacit agreement among bidders not to bid in an auction, or to bid a particular price;
2. An agreement among bidders not to

3. An agreement among bidders not to bid against each other; or

4. Other agreements among bidders that have the potential to affect the final auction price.

Pursuant to 43 U.S.C. 1337(c)(3), BOEM will decline to award a lease if the Attorney General, in consultation with the Federal Trade Commission, determines that awarding the lease would be inconsistent with antitrust laws.

For more information on whether specific communications or agreements could constitute a violation of federal antitrust law, please see <https://www.justice.gov/atr/business-resources> or consult legal counsel.

a. Process for Issuing the Lease

Once all post-auction reviews have been completed to BOEM's satisfaction, BOEM will provide three unsigned copies of the lease to each provisionally winning bidder. Within 10 business days after receiving the lease copies, the provisionally winning bidders must:

1. Sign and return the lease copies on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515–537; and
3. Pay by electronic funds transfer (EFT) the balance owed (the winning cash bid less the applicable bid deposit), if any. BOEM requires bidders to use EFT procedures (not *pay.gov*, the website bidders used to submit bid deposits) for payment of the balance, following the detailed instructions available on ONRR's website at: <https://onrr.gov/paying/payment-options?tabs=renewable-energy,bid-deposit-options>.

BOEM will not execute the lease until the three requirements above have been satisfied. BOEM has accepted the provisionally winning bidder's financial assurance pursuant to 30 CFR 585.515, and BOEM has processed the provisionally winning bidder's payment. BOEM may extend the 10-business-day deadline for signing a lease, filing the required financial assurance, and paying the balance owed if BOEM determines, in its sole discretion, that the provisionally winning bidder's inability to comply with the deadline was caused by events beyond the provisionally winning bidder's control pursuant to 30 CFR 585.224(e).

If the provisionally winning bidder does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right not to issue the lease to that bidder. In such a case, the provisional winner will forfeit its bid deposit. Also, in such a case,

BOEM reserves the right to offer the lease to the next highest eligible bidder as determined by BOEM.

Within 45 calendar days of the date that a provisional winner receives lease copies, each provisional winner is required to pay the first year's rent using the "ONRR Renewable Energy Initial Rental Payments" form available at: <https://www.pay.gov/public/form/start/27797604/>.

Subsequent annual rent payments must be made following the detailed instructions available on ONRR's website at: <https://onrr.gov/paying/payment-options?tabs=rent-payments>.

b. Non-Procurement Debarment and Suspension Regulations

Pursuant to 43 CFR part 42, subpart C, an OCS renewable energy Lessee will be required to comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400. The Lessee must also communicate this requirement to persons with whom the Lessee does business relating to this lease by including this requirement as a condition in their contracts and in other transactions.

c. Changes to Auction Details

The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction detail specified in the FSN, including the date and time, if s/he deems that events outside BOEM's control may interfere with a fair and proper lease sale. Such events may include, but are not limited to, natural disasters (e.g., earthquakes, hurricanes, floods, and blizzards), wars, riots, acts of terrorism, fire, strikes, civil disorder, Federal Government shutdowns, cyberattacks against relevant information systems, or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, and BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>. Bidders should call BOEM's Auction Manager at (703) 787-1121 if they have concerns.

d. Withdrawal of Blocks

BOEM reserves the right to withdraw all or portions of each lease area prior to executing the leases with the winning bidders. If BOEM exercises this right, it will refund bid deposits to winning bidders, without interest, as provided in 30 CFR 585.224(f).

e. Appeals

Procedures to request reconsideration of rejected bids are provided in BOEM's regulations at 30 CFR 585.225 and

585.118(c). BOEM's decision on a bid is the final action of the Department of the Interior, and is not subject to appeal to the Office of Hearings and Appeals, but an unsuccessful bidder may apply for reconsideration by the Director under 30 CFR 585.225 as follows:

(a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons and will refund any money deposited with your bid, without interest.

(b) You may ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). The Director will send you a written response either affirming or reversing the rejection.

f. Protection of Privileged or Confidential Information

BOEM will protect privileged or confidential information that the Lessee submits, as authorized by the Freedom of Information Act (FOIA), 30 CFR 585.114, or other applicable statutes. If the Lessee wishes to protect the confidentiality of information, the Lessee should clearly mark it "Contains Privileged or Confidential Information" and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. If your submission is requested under the FOIA, your information will only be withheld if a determination is made that one of the FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations and applicable law. Labeling information as privileged or confidential will alert BOEM to more closely scrutinize whether it warrants withholding. Further, BOEM will not treat as confidential aggregate summaries of otherwise nonconfidential information.

XV. Compliance With the Inflation Reduction Act (Pub. L. 117-169 (Aug. 16, 2022)) (Hereinafter, the "IRA")

Section 50265(b)(2) of the IRA provides that "[d]uring the 10-year period beginning on the date of enactment of this Act . . . the Secretary may not issue a lease for offshore wind development under section 8(p)(1)(C) of the OCS Lands Act (43 U.S.C. 1337(p)(1)(C)) unless—(A) an offshore [oil and gas] lease sale has been held during the 1-year period ending on the date of the issuance of the lease for offshore wind development; and (B) the sum total of acres offered for lease in offshore [oil and gas] lease sales during the 1-year period ending on the date of the issuance of the lease for offshore

wind development is not less than 60,000,000 acres." Section 50264(d) of the IRA provides that ". . . not later than March 31, 2023, the Secretary shall conduct Lease Sale 259[.]" Oil and Gas Lease Sale 261 was held on December 20, 2023, satisfying the requirements in section 50265(b)(2) of the IRA for any offshore wind lease issued by December 20, 2024. BOEM expects to issue any leases resulting from ATLW-10 no later than the one-year anniversary of Lease Sale 261.

Authority: 43 U.S.C. 1337(p); 30 CFR 585.211 and 585.216.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2024-14462 Filed 6-28-24; 8:45 am]

BILLING CODE 4340-98-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1123 (Third Review)]

Steel Wire Garment Hangers from China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty order on steel wire garment hangers from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2024. To be assured of consideration, the deadline for responses is July 31, 2024. Comments on the adequacy of responses may be filed with the Commission by September 6, 2024.

FOR FURTHER INFORMATION CONTACT: Calvin Chang (202-205-3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On October 6, 2008, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of steel wire garment hangers from China (73 FR 58111). Commerce issued a continuation of the antidumping duty order on imports of steel wire garment hangers from China following Commerce's and the Commission's first five-year reviews, effective March 11, 2014 (79 FR 13613) and second five-year reviews, effective August 28, 2019 (84 FR 45127). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full or expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its expedited first and second five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of all the various types of steel wire garment hangers, co-extensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose

collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined a single *Domestic Industry* consisting of all domestic producers of steel wire garment hangers, with the exception of two domestic firms (Laidlaw Company LLC and United Wire Hangers Corporation), which were excluded from the *Domestic Industry* by a majority of the Commission in the Commission's original determination based on the firms' related party status and their importation of subject merchandise. In its expedited first and second five-year review determinations, however, the Commission defined a single *Domestic Industry* consisting of all domestic producers of steel wire garment hangers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval

to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on July 31, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an

expedited or full review. The deadline for filing such comments is 5:15 p.m. on September 6, 2024. 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–609, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b))

in making its determination in the review.

Information To Be Provided in Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the

United States or other countries after 2018.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in number of hangers and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during

calendar year 2023 (report quantity data in number of hangers and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in number of hangers and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the

market for the *Subject Merchandise* in the *Subject Country* after 2018, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-14456 Filed 6-28-24; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-450 and 731-TA-1122 (Third Review)]

Laminated Woven Sacks From China; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping and countervailing duty orders on laminated woven sacks from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice

by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2024. To be assured of consideration, the deadline for responses is July 31, 2024. Comments on the adequacy of responses may be filed with the Commission by September 6, 2024.

FOR FURTHER INFORMATION CONTACT: Alec Resch (202-708-1448), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On August 7, 2008, the Department of Commerce ("Commerce") issued antidumping and countervailing duty orders on imports of laminated woven sacks from China (73 FR 45941 and 73 FR 45955). Commerce issued a continuation of the countervailing and antidumping duty orders on imports of laminated woven sacks from China following Commerce's and the Commission's first five-year reviews, effective March 26, 2014 (79 FR 16770) and March 27, 2014 (79 FR 17134), and second five-year reviews, effective August 28, 2019 (84 FR 45128). The Commission is now conducting third five-year reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations and its expedited first and second five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of laminated woven sacks, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all producers of the *Domestic Like Product*. Certain Commissioners defined the *Domestic Industry* differently in the original determinations. In its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* as all U.S. producers of laminated woven sacks.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an

earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008).

Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity

purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on July 31, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is 5:15 p.m. on September 6, 2024. 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–605, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the

information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term “firm” includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC’s website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the “NOI worksheet” Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of

imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2018.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm’s operations on that product during calendar year 2023, except as noted (report quantity data in number of sacks and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm’s(s’) production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit,

(iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm’s(s’) operations on that product during calendar year 2023 (report quantity data in number of sacks and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm’s(s’) imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm’s(s’) operations on that product during calendar year 2023 (report quantity data in number of sacks and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm’s(s’) production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment

and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2018, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-14445 Filed 6-28-24; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1186-1187 (Second Review)]

Stilbenic Optical Brightening Agents From China and Taiwan; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty orders on stilbenic optical brightening agents from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2024. To be assured of consideration, the deadline for responses is July 31, 2024. Comments on the adequacy of responses may be filed with the Commission by September 6, 2024.

FOR FURTHER INFORMATION CONTACT: Julie Duffy (202-708-2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On May 10, 2012, the Department of Commerce ("Commerce") issued antidumping duty orders on imports of certain stilbenic optical brightening agents from China and Taiwan (77 FR 27419 and 27423). Following the first five-year reviews by Commerce and the Commission, effective November 27, 2017, Commerce issued a continuation of the antidumping duty orders on imports of certain stilbenic optical brightening agents from China and Taiwan (82 FR 55990). The Commission previously instituted these second five-year

reviews on October 2, 2022 (87 FR 59827), but subsequently terminated the reviews on January 13, 2023 (88 FR 2374) following Commerce's final results of sunset reviews and revocation of the orders on certain stilbenic optical brightening agents from China and Taiwan (87 FR 80162, December 29, 2022). Following an appeal by domestic producer Archroma U.S., Inc., the U.S. Court of International Trade directed Commerce and the Commission to undertake reviews of the orders. See *Archroma U.S., Inc. v. United States*, Ct. No. 22-354, Slip Op. 24-61 and Declaratory Judgment and Injunction (Ct. Int'l Trade May 28, 2024). The Commission is therefore reinstituting these second five-year reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations and its expedited first five-year review determinations, the Commission found a single *Domestic Like Product* consisting of all forms, states, concentrations, and compositions of stilbenic optical brightening agent products co-extensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations,

the Commission defined the *Domestic Industry* to consist of all U.S. producers of the *Domestic Like Product*, namely Clariant Corporation, BASF Corporation, and 3V Incorporated. In its expedited five-year review determinations, the Commission again defined the *Domestic Industry* as consisting of all U.S. producers of certain stilbenic optical brightening agents coextensive with Commerce's scope.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 6, 2024. 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget (“OMB”) number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–544, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response.

If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term “firm” includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC’s website for this proceeding at https://www.usitc.gov/investigations/701731/2022/stilbenic_optical_brightening_agents_china_and_adequacy.htm and download and complete the “NOI worksheet” Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the

United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm’s operations on that product during calendar year 2021, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm’s(s’) production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm’s(s’) operations on that product during

calendar year 2021 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm’s(s’) imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm’s(s’) operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm’s(s’) production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm’s(s’) exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm’s(s’) exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the

market for the *Subject Merchandise* in each *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–14457 Filed 6–28–24; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–405–406 and 408 and 731–TA–899–901 and 906–908 (Fourth Review)]

Hot-Rolled Steel Products From China, India, Indonesia, Taiwan, Thailand, and Ukraine; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the countervailing duty orders on hot-rolled steel products from India, Indonesia, and Thailand and antidumping duty

orders on hot-rolled steel products from China, India, Indonesia, Taiwan, Thailand, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2024. To be assured of consideration, the deadline for responses is July 31, 2024. Comments on the adequacy of responses may be filed with the Commission by September 6, 2024.

FOR FURTHER INFORMATION CONTACT: Caitlyn Hendricks-Costello (202–205–2058), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On November 29, 2001, the Department of Commerce (“Commerce”) issued antidumping duty orders on imports of hot-rolled steel products from China, Taiwan, Thailand, and Ukraine (66 FR 59561, 59563, 59562, and 59559). On December 3, 2001, Commerce issued countervailing duty orders on imports of hot-rolled steel products from India, Indonesia, and Thailand and antidumping duty orders on imports of hot-rolled steel products from India and Indonesia (66 FR 60197, 60194, 60198, 60192, and 60198). Commerce issued a continuation of the countervailing duty orders on hot-rolled steel products from India, Indonesia, and Thailand and antidumping duty orders on hot-rolled steel products from China, India, Indonesia, Taiwan, Thailand, and Ukraine following Commerce's and the Commission's first five-year reviews, effective December 27, 2007 (72 FR 73316), second five-year reviews, effective February 7, 2014 (79 FR 7425), and third five-year reviews, effective August 27, 2019 (84 FR 44851). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the

orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China, India, Indonesia, Taiwan, Thailand, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, its full first and second five-year review determinations, and its expedited third five-year review determinations, the Commission defined the *Domestic Like Product* as all hot-rolled steel products corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first and second five-year review determinations, and its expedited third five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of hot-rolled steel products.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with

the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008).

Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter

will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on July 31, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is 5:15 p.m. on September 6, 2024. 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently

valid Office of Management and Budget (“OMB”) number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–604, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term “firm” includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the “NOI worksheet” Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject*

Merchandise, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2018.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of

total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject*

Merchandise in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2018, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–14444 Filed 6–28–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–607 and 731–TA–1417 and 1419 (Review)]

Steel Propane Cylinders From China and Thailand; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the countervailing duty order on steel propane cylinders from China and the antidumping duty orders on steel propane cylinders from China and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2024. To be assured of consideration, the deadline for responses is July 31, 2024. Comments on the adequacy of responses may be filed with the Commission by September 6, 2024.

FOR FURTHER INFORMATION CONTACT: Kenneth Gatten (202–708–1447), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On August 15, 2019, the Department of Commerce (“Commerce”) issued a countervailing duty order on steel propane cylinders from China (84 FR 41700) and antidumping duty orders on steel propane cylinders from China and Thailand (84 FR 41703). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined a single *Domestic Like Product* consisting of steel propane cylinders coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to include all domestic producers of steel propane cylinders.

(5) The *Order Date* is the date that the orders under review became effective. In

these reviews, the *Order Date* is August 15, 2019.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21

days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on July 31, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on September 6, 2024. 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the

proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–608, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_

worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or

the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in pounds (tare weight) and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds (tare weight) and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S.

imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds (tare weight) and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase

production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-14452 Filed 6-28-24; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-749 (Fifth Review)]

Persulfates From China; Institution of a Five-Year Review

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty order on persulfates from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2024. To be assured of consideration, the deadline for responses is July 31, 2024. Comments on the adequacy of responses may be filed with the Commission by September 6, 2024.

FOR FURTHER INFORMATION CONTACT:

Alexis Yim (202–708–1446), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On July 7, 1997, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of persulfates from China (62 FR 36259).

Commerce issued a continuation of the antidumping duty order on imports of persulfates from China following Commerce's and the Commission's first five-year reviews, effective December 24, 2002 (67 FR 78415), second five-year reviews, effective April 21, 2008 (73 FR 21318), third five-year reviews, effective March 28, 2014 (79 FR 17506), and fourth five-year reviews, effective August 28, 2019 (84 FR 45123). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, its expedited first and second five-year review determinations, its full third five-year review determination, and its expedited fourth five-year review determination, the Commission found a single *Domestic Like Product* consisting of ammonium, sodium, and potassium persulfates, coextensive with the scope of the order.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its expedited first and second five-year review determinations, its full third five-year review determination, and its expedited fourth five-year review determination, the Commission defined the *Domestic Industry* as producers of ammonium, sodium, and potassium persulfates.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same

underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008).

Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such

responses is 5:15 p.m. on July 31, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on September 6, 2024. 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–606, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested

party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in

§ 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2018.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently

completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total

exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2018, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-14421 Filed 6-28-24; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-453 and 731-TA-1136-1137 (Third Review)]

Sodium Nitrite From China and Germany; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews

pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping and countervailing duty orders on sodium nitrite from China and the antidumping duty order on sodium nitrite from Germany would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2024. To be assured of consideration, the deadline for responses is July 31, 2024. Comments on the adequacy of responses may be filed with the Commission by September 6, 2024.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On August 27, 2008, the Department of Commerce ("Commerce") issued antidumping and countervailing duty orders on sodium nitrite from China and an antidumping duty order on sodium nitrite from Germany (73 FR 50593 and 73 FR 50595). Commerce issued a continuation of the antidumping duty orders on sodium nitrite from China and Germany and the countervailing duty order on sodium nitrite from China following Commerce's and the Commission's first five-year reviews, effective February 12, 2014 (79 FR 8438) and September 5, 2014 (79 FR 53016), and second five-year reviews, effective August 12, 2019 (84 FR 39804). The Commission is now conducting third reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the

Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Germany.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations and its expedited first and second five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of sodium nitrite, regardless of form or grade, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its expedited first and second five-year review determinations, the Commission defined a single *Domestic Industry* consisting of all U.S. sodium nitrite producers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding 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 proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons,

or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008).

Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on July 31, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is 5:15 p.m. on September 6, 2024. 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–607, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments

regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a

union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2018.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have

expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not

including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2018, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–14454 Filed 6–28–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Survey of Occupational Injuries and Illnesses

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before July 31, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Survey of Occupational Injuries and

Illnesses is the primary indicator of the Nation's progress in providing every working man and woman safe and healthful working conditions. The survey measures the overall rate of work injuries and illnesses by industry. Survey data are also used to evaluate the effectiveness of Federal and State programs and to prioritize scarce resources. Respondents include employers who maintain Occupational Safety and Health Administration (OSHA) records in accordance with the Occupational Safety and Health Act and employers who are normally exempt from OSHA recordkeeping. Each year a sample of exempt employers is required to keep records and participate in the survey. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 17, 2024 (89 FR 27454).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–BLS.

Title of Collection: Survey of Occupational Injuries and Illnesses.

OMB Control Number: 1220–0045.

Affected Public: State, Local and Tribal Governments; Businesses or other for-profits; Farms; Not-for-profit institutions.

Total Estimated Number of Respondents: 228,200.

Total Estimated Number of Responses: 228,200.

Total Estimated Annual Time Burden: 214,904 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–14375 Filed 6–28–24; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration**

[Docket No. OSHA–2011–0187]

Electrical Standards for Construction and General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Request for public comments.**SUMMARY:** OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Electrical Standards for Construction and General Industry.**DATES:** Comments must be submitted (postmarked, sent, or received) by August 30, 2024.**ADDRESSES:***Electronically:* You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.*Docket:* To read or download comments or other material in the docket, go to <https://www.regulations.gov>. Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.*Instructions:* All submissions must include the agency name and OSHA docket number (OSHA–2011–0187) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.**FOR FURTHER INFORMATION CONTACT:** Seleda Perryman, Directorate of

Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:**I. Background**

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to alert workers to the presence and types of electrical hazards in the workplace, thereby preventing serious injury and death by electrocution. The information collection requirements in these Standards involve the following: the employer using electrical equipment that is marked with the manufacturer's name, trademark, or other descriptive markings that identify the producer of the equipment, and marking the equipment with the voltage, current, wattage, or other ratings necessary; requiring each disconnecting means for motors and appliances to be marked legibly to indicate its purpose, unless located and arranged so the purpose is evident; requiring the entrances to rooms and other guarded locations containing exposed live parts to be marked with conspicuous warning signs forbidding unqualified persons from entering; and, for construction employers only, establishing and

implementing the assured equipment grounding conductor program instead of using ground-fault circuit interrupters.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Electrical Standards for Construction and General Industry. The agency is requesting an adjustment increase in burden from 200,045 hours to 210,693 hours, a difference of 10,648 hours. This increase is due to the increase in the number of establishments.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.*Title:* Electrical Standards for Construction and General Industry.*OMB Control Number:* 1218–0130.*Affected Public:* Business or other for-profits.*Number of Respondents:* 6,440,699.*Number of Responses:* 2,979,332.*Frequency of Responses:* On occasion.*Average Time per Response:* Varies.*Estimated Total Burden Hours:* 210,693.*Estimated Cost (Operation and Maintenance):* \$9,501,187.**IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows:

- (1) electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal; or
- (2) by facsimile (fax), if your comments, including attachments, are not longer

than 10 pages you may fax them to the OSHA Docket Office at (202) 693-1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA-2011-0187). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <https://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <https://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627 for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8-2020 (85 FR 58393).

Signed at Washington, DC, on June 25, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024-14478 Filed 6-28-24; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 024-044]

NASA Astrophysics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the

Astrophysics Advisory Committee. This Committee reports to the Director, Astrophysics Division, Science Mission Directorate, NASA Headquarters. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, July 23, 2024, 9 a.m. to 5 p.m., eastern time, and Wednesday, July 24, 2024, 9 a.m. to 5 p.m., eastern time.

ADDRESSES: Meetings will be virtual. See Webex information below.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, 202-358-2355 or karshelia.kinard@nasa.gov.

SUPPLEMENTARY INFORMATION: As noted above, these meetings are virtual and will take place by dial-in and via Webex. Any interested person must use a touch-tone phone to participate in this meeting. The Webex connectivity information for each day is provided below. For audio, when you join the Webex event, you may use your computer or provide your phone number to receive a call back, otherwise, call the U.S. toll conference number listed for each day. For Tuesday, July 23, 2024, the WebEx information for attendees is: <https://nasaenterprise.webex.com/j.php?MTID=m650b5d5809f4592a126142f1cb65af4f>. The meeting number is: 2823 246 9893 and the meeting password is: Apac0724#. To join by telephone the United States toll-free numbers are, 1-929-251-9612 (New York City) or 1-415-527-5035. (Access Code: 2823 246 9893).

For Wednesday, July 24, 2024, the WebEx information for attendees is: <https://nasaenterprise.webex.com/j.php?MTID=m09763dbba6a36db6999a2e6900a05f5d>. The meeting number is: 2823 807 2902 and the meeting password is: Apac0724#. To join by telephone the United States toll-free numbers are 1-929-251-9612 (New York City) or 1-415-527-5035 (Access code: 2823 807 2902).

The agenda for the meeting includes the following topics:

- Astrophysics Division Update
- Updates on Specific Astrophysics Missions
- Discussion of reports from the Program Analysis Groups

The agenda will be posted on the Astrophysics Advisory Committee web page: <https://beta.science.nasa.gov/researchers/nac/science-advisory->

[committees/apac/](#). The public may submit and upvote comments/questions ahead of the meeting through the website: APAC Summer Meeting 2024—NASA (cnf.io), that will be opened for input on July 10, 2024.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Carol J. Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2024-14453 Filed 6-28-24; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2024-043]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We have submitted a request to the Office of Management and Budget (OMB) for approval to continue to use a currently approved information collection, 3095-0060, Volunteer Service Application (NA Form 6045), used by individuals who wish to volunteer at the National Archives Building, the National Archives at College Park, regional records services facilities, and Presidential libraries and a new form, Voluntary Internship Application (NA Form 3060A), used by individuals who wish to intern at the National Archives Building, the National Archives at College Park, regional records services facilities, and Presidential libraries. We invite you to comment on this proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: OMB must receive written comments on or before July 31, 2024.

ADDRESSES: Send any comments and recommendations on the proposed information collection in writing to 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.

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm, Paperwork Reduction Act Officer, by email at tamee.fechhelm@nara.gov or by telephone at 301.837.1694 with any requests for additional information.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on April 25, 2024 (89 FR 31774) and we received no comments. We are therefore submitting the described information collection to OMB for approval.

If you have comments or suggestions, they should address one or more of the following points: (a) whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether this collection affects small businesses.

All comments will become a matter of public record.

In this notice, we solicit comments concerning the following information collection:

Title: Volunteer Service Application and Voluntary Internship Application.

OMB number: 3095–0060.

Agency form numbers: NA Form 6045 (Volunteer Service Application) and NA Form 3060A, Voluntary Internship Application.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 1,000.

Estimated time per response: 25 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 416 hours.

Abstract: We use volunteer resources to enhance our services to the public and to further our mission of providing ready access to essential evidence. Volunteers assist in outreach and public programs and provide technical and research support for administrative, archival, library, and curatorial staff, as well as other programs. We use a standard form for volunteers to apply and to assess the qualifications of potential volunteers. Members of the public who are interested in being a NARA volunteer use NA Form 6045, to signal their interest and to identify their qualifications for the work. Once we have selected someone as a volunteer, they fill out NA Form 6045a, Standards of Conduct for Volunteers, NA Form 6045b, Volunteer or Intern Emergency and Medical Consent, and NA Form

6045c, Volunteer or Intern Confidentiality Statement.

In addition to Pathways internships, NARA also uses voluntary (unpaid) interns to create a pipeline; bring fresh perspectives and ideas; and serve as NARA brand ambassadors. This opportunity provides interns with training, experience, and skills that will prepare them for their careers; and prepares participants for future employment with NARA. Engaging interns also involves the use of NA Form 3060A, Voluntary Internship Application to collect information for intern qualifications. Upon selection, applicants fill out the NA Form 3060, Voluntary Internship Agreement, as well as the other forms listed above.

Sheena Burrell,

Executive for Information Services/CIO.

[FR Doc. 2024–14368 Filed 6–28–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Renewal of Agency Information Collection of a Previously Approved Collection; Request for Comments

Correction

In notice document 2024–13504 beginning on page 51909 in the issue of Thursday, June 20th, 2024, make the following corrections:

1. On page 51910, in the first column, the 26th through 28th lines should appear as follows:

OMB Number: 3133–0195.

Title: Minority Depository Institution Preservation Program.

Type of Review: Revision of a currently approved collection

2. On the same page, in the same column, the sixth through fourth lines from the bottom of the page should appear as follows:

OMB Number: 3133–0190.

Title: Loans in Areas Having Special Flood Hazards, 12 CFR 760.

Type of Review: Revision of a currently approved collection

3. On the same page, in the second column, the 29th through 31st lines should appear as follows:

OMB Number: 3133–0133.

Title: Investment and Deposit Activities, 12 CFR part 703.

Type of Review: Revision of a currently approved collection

[FR Doc. C1–2024–13504 Filed 6–28–24; 8:45 am]

BILLING CODE 0099–10–D

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel.

DATES: The meeting will be held on Thursday, August 15, 2024, from 12:00 p.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606–8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after October 1, 2024. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified and the methods of transportation and security measures confidential, I have determined that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: June 26, 2024.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024–14450 Filed 6–28–24; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION**[NRC–2024–0001]****Sunshine Act Meetings**

TIME AND DATE: Weeks of July 1, 8, 15, 22, 29, and August 5, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at Betty.Thweatt@nrc.gov or Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:**Week of July 1, 2024**

There are no meetings scheduled for the week of July 1, 2024.

Week of July 8, 2024—Tentative

Thursday, July 11, 2024

10:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Greg Stock: 570–449–4306)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

Week of July 15, 2024—Tentative

There are no meetings scheduled for the week of July 15, 2024.

Week of July 22, 2024—Tentative

There are no meetings scheduled for the week of July 22, 2024.

Week of July 29, 2024—Tentative

There are no meetings scheduled for the week of July 29, 2024.

Week of August 5, 2024—Tentative

There are no meetings scheduled for the week of August 5, 2024.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Sarah Turner at 301–287–9058 or via email at Sarah.Turner@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: June 27, 2024.

For the Nuclear Regulatory Commission.

Sarah A. Turner,

Information Management Specialist, Office of the Secretary.

[FR Doc. 2024–14567 Filed 6–27–24; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2024–0008]

Submission for Review: Establishment Information Form, DD 1918, Wage Data Collection Form, DD 1919, Wage Data Collection Continuation Form, DD 1919C, 3206–0036

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension of an existing information collection request (ICR), OMB Control 3206–0036: Establishment Information Form (DD 1918); Wage Data Collection Form (DD 1919); and Wage Data Collection Continuation Form (DD 1919C).

DATES: Comments are encouraged and will be accepted until July 31, 2024.

ADDRESSES: Written comments and recommendations for this proposed information collection should be sent within 30 days of publication of this notice to <http://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection request by selecting “Office of Personnel Management” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at paypolicy@opm.gov.

SUPPLEMENTARY INFORMATION: OPM, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. chapter 35), provides the public with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Agency assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Agency's information collection requirements and provide the requested data in the desired format.

The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM for use by the Department of Defense to establish prevailing wage rates for Federal Wage System employees. The proposed extension of the information collection was previously published in the **Federal Register** on March 25, 2024, at 89 FR 20710, allowing for a 60-day public comment period. No relevant comments were received.

The purpose of this notice is to advise the public that OPM is submitting this information collection to the Office of Management and Budget (OMB) and to allow an additional 30 days for public comments. OMB is particularly interested in comments that:

(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; and

(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.

Analysis

Agency: Workforce Policy and Innovation, Office of Personnel Management.

Title: Establishment Information Form, Wage Data Collection Form, and Wage Data Collection Continuation Form.

OMB Number: 3260–0036.

Frequency: Annually.

Affected Public: Private Sector Establishments.

Number of Respondents: 21,760.

Estimated Time per Respondent: 1.5 hours.

Total Burden Hours: 32,640.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–14182 Filed 6–28–24; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act, notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, July 18, 2024. There will be no in-person gathering for this meeting.

DATES: The virtual meeting will be held on July 18, 2024, beginning at 10:00 a.m. (ET).

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, 202–606–2858, or email paypolicy@opm.gov.

SUPPLEMENTARY INFORMATION: The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public. Reports for calendar years 2008 to 2023 are posted at <http://www.opm.gov/fprac>. Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's

attention. Additional information on these meetings may be obtained by contacting the Committee at Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 7H31, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

This meeting is open to the public, with an audio option for listening. This notice sets forth the participation guidelines for the meeting.

Meeting Agenda. The committee meets to discuss various agenda items related to the determination of prevailing wage rates for the Federal Wage System. The committee's agenda is approved one week prior to the public meeting and will be available upon request at that time.

Public Participation: The July 18, 2024, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the meeting. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to paypolicy@opm.gov with the subject line "July 18, 2024" no later than Tuesday, July 16, 2024.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to media@opm.gov by July 16, 2024.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–14439 Filed 6–28–24; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–386 and CP2024–394; MC2024–387 and CP2024–395; MC2024–388 and CP2024–396; MC2024–389 and CP2024–397; MC2024–390 and CP2024–398]

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:* July 3, 2024.

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
- II. Docketed Proceeding(s)

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

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).

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)*: MC2024–386 and CP2024–384; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 125 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Almaroof Agoro; *Comments Due*: July 3, 2024.

2. *Docket No(s)*: MC2024–387 and CP2024–395; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 126 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: July 3, 2024.

3. *Docket No(s)*: MC2024–388 and CP2024–396; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 127 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: July 3, 2024.

4. *Docket No(s)*: MC2024–389 and CP2024–397; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 128 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: July 3, 2024.

5. *Docket No(s)*: MC2024–390 and CP2024–398; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 129 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: June 25, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public*

Representative: Christopher C. Mohr; *Comments Due*: July 3, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–14442 Filed 6–28–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100416; File No. SR–NASDAQ–2024–027]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reconfigure Fees for the Daily List and Fundamental Data to Better Reflect the Value of the Information Distributed

June 25, 2024.

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 June 17, 2024, 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, 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 reconfigure fees for the Daily List and Fundamental Data to better reflect the value of the information distributed.

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

Nasdaq proposes to reconfigure fees for the Daily List,³ its corporate actions product,⁴ to better reflect the value of the information distributed.⁵

First, Nasdaq proposes to increase the licensing fee for the Daily List, which also includes Fundamental Data, from \$1,750 to \$3,500 per month to better reflect its market value. Current fees for the Daily List are below the range of fees for other corporate actions products, none of which, except for the Daily List, are subject to the fee filing requirements that apply to Self-Regulatory Organizations (“SROs”).⁶ Current fees for comparable products are between \$3,000 and \$12,000 per month or more; the proposal will raise Daily List fees from below that range to within the range, at its lower end.⁷

Second, together with the proposed rule change, the Exchange will publish information about the execution of corporate actions by the Exchange, as well as information related to issuer status under Exchange rules, on NasdaqTrader.com or a successor website, at the same time as such information is updated on the Daily List. The dual publication of information on a public website and a corporate actions product is the same

³ See Equity 7, Section 122. The information contained in the Daily List includes information about the corporate actions of issuers (such as dividends, stock splits, and mergers and acquisitions), execution of corporate actions by the Exchange (such as execution dates and symbol changes), and information about issuer status.

⁴ Corporate actions are undertakings by issuers that materially impact the value of their shares, such as, for example, the payment of dividends, stock splits, tender offers, or a merger and acquisition.

⁵ This proposal was first submitted on June 3, 2024. See SR–Nasdaq–2024–024. On June 17, 2024, that filing was withdrawn and replaced with the instant filing to provide additional information in support of the proposal.

⁶ As discussed in further detail below, the New York Stock Exchange sells a corporate actions product, but does not file SRO fees for that product. See New York Stock Exchange, *Corporate Actions*, available at <https://www.nyse.com/market-data/corporate-actions>. NYSE also publishes information related to the execution of corporate actions on a public website, as Nasdaq proposes to do with this filing. The remaining vendors that offer corporate actions products are not SROs.

⁷ As discussed below, this estimate is based on Nasdaq’s understanding of the market, as none of the competitor products have published fee schedules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

two-part structure used by the New York Stock Exchange, which does not file the fees for its corporate actions product as an SRO.⁸

Publication of information about the execution of corporate actions and corporate status by the Exchange on an open website will not require a rule change. Nasdaq already publishes information concerning certain corporate actions on *NasdaqTrader.com*, such as Market Center and financial status, and this change will simply add to the information made available to the public.

The Daily List

The Daily List is a compendium of corporate actions information—including new listings, delistings, symbol name changes, dividends, and other information for the Nasdaq Stock Market.⁹ It is comprised of the following sets of information:¹⁰

Nasdaq Equity Data: Provides notification of corporate actions information such as new listings, delistings, corporate name changes, trading symbol changes, market tier changes and Financial Status Indicator (FSI) changes that occur on the Nasdaq Global Select Market, Nasdaq Global Market and Nasdaq Capital Market.

Dividends: Provides notification of cash dividends, stock dividends and stock splits to Nasdaq securities.

Next Day Ex-Date: Summarizes the securities with dividend adjustments to

be applied to the previous closing price on the next business day.¹¹

Full historical information is available back to May 24, 1999. Daily List files for the current business month are available for download via a secured FTP interface, and from a secured website.

All of the information published on the Daily List is from issuers, except for information related to the execution of corporate actions by the Exchange and issuer status under Exchange rules. Nasdaq receives corporate actions information from issuers on the same basis as any other market participant, with no inherent advantage in speed or access due to its unique position as an SRO.

Daily List is updated every 15 minutes between 7:00 a.m. and 10:00 p.m. on trading days.

Fundamental Data

Nasdaq Fundamental Data provides security master and market summary statistics on a T+1 basis for Nasdaq securities.¹² The fundamental data report contains start of trading day information on Nasdaq equities, including trading summary data such as high and low price, total shares outstanding (TSO), Nasdaq Official Closing Price (NOCP), and public float.

Like the Daily List, Fundamental Data files are available via secured website or secured file transfer protocol server.

Fundamental Data is distributed with the Daily List as supplemental information.

Proposed Changes

As summarized above, Nasdaq proposes to reconfigure fees for the Daily List to better reflect the value of the information distributed.

First, Nasdaq proposes to increase the licensing fee for the Daily List, which also includes Fundamental Data, from \$1,750 to \$3,500 per month to better reflect its market value. The Daily List faces competition from substitute products from a number of vendors, none of which are required to file fees for their corporate actions products as SROs. Based on Nasdaq's understanding of the sale of corporate actions products, the fee range for competitor corporate actions products appears to be between \$3,000 and \$12,000 per month or more. The proposal will raise Daily List fees from below that range to within the range, at its lower end.

Second, together with the proposed rule change, the Exchange will make corporate actions executed by the

Exchange and information related to issuer status under Exchange rules available to the public on *NasdaqTrader.com* or a successor website at the same time as on the Daily List. The dual publication of information on a public website and a corporate actions product is the same two-part structure used by the New York Stock Exchange, which does not file the fees for its corporate actions product as an SRO.

Publication of information about the execution of corporate actions and corporate status by the Exchange on an open website will not require a rule change. Nasdaq already publishes information concerning certain corporate actions on *NasdaqTrader.com*, such as Market Center and financial status, and this change merely adds to the information made available to the public.

Market for Corporate Actions Products

A corporate action is an undertaking by an issuer that materially impacts the value of its shares. Corporate actions range from making a change to a company's name to issuing a dividend or restructuring the company through a merger or bankruptcy. Common corporate actions include, but are not limited to, name or trading symbol change, stock splits,¹³ issuance of dividends, mergers and acquisitions, rights issue,¹⁴ and liquidation or dissolution.¹⁵

Although corporate actions are undertaken by the issuer, certain corporate actions require activity by the Exchange to complete. One example of this is the Ex-Date for dividends. When a company declares a dividend, its board of directors establishes a record date. This is the date a person must be on the company's record as a shareholder to receive a dividend payment. Once the record date is set, the ex-dividend date is also set. For the Nasdaq Stock Exchange, the Ex-Date for dividends is generally set one business day prior to the record date, but a different date may be established under certain circumstances.¹⁶

¹³ This includes both the division of a stock into smaller shares and a reverse stock split that reduces the number of shares outstanding and increases the price per share.

¹⁴ "Rights issue" refers to the issuance of "rights" to shareholders that entitle them to buy additional shares directly from the company in proportion to their existing holdings within a prescribed period.

¹⁵ Liquidation is the process by which a company sells off its assets and closes its business. In liquidation, the company's assets are sold and the proceeds are used to pay off creditors. Dissolution is the last stage of liquidation, in which the assets and property of the company are redistributed.

¹⁶ See Equity 11, Section 11140. Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-

⁸ NYSE publishes information on exchange implementation of corporate actions on two different web pages, one for corporate actions (NYSE Corporate Actions) and another for ex-date dividends (NYSE Ex-Date Dividends).

⁹ See Nasdaq, *Daily List*, available at <http://www.nasdaqtrader.com/Trader.aspx?id=DailyListPD>; see also Securities Exchange Act Release No. 68636 (January 11, 2013), 78 FR 3940 (January 17, 2013) (SR-Nasdaq-2013-009) (establishing fees for the Daily List and Fundamental Data products); Securities Exchange Act Release No. 34-79701 (December 29, 2016), 82 FR 1381 (January 5, 2017) (SR-Nasdaq-2016-175) (establishing current monthly fee for the Daily List and Fundamental Data).

¹⁰ The last fee modification for the Daily List inadvertently identified the Mutual Fund Quotation Service ("MFQS") as included with the Daily List product. See Securities Exchange Act Release No. 34-79701 (December 29, 2016), 82 FR 1381 (January 5, 2017) (SR-Nasdaq-2016-175). The Commission approved removal of MFQS from the Nasdaq rule book in 2008. See Securities Exchange Act Release No. 58392 (August 20, 2008), 73 FR 50382 (August 26, 2008) (SR-Nasdaq-2008-019). MFQS information was removed from the Daily List on October 17, 2011. See Nasdaq, "Data Technical News #2011-17" (September 1, 2011), available at <https://www.nasdaqtrader.com/TraderNews.aspx?id=dtm2011-017>. The identification of MFQS as information included in the Daily List Product in SR-Nasdaq-2016-175 was in error.

¹¹ The Daily List also includes a symbol directory and a list of dual-listed securities for reference.

¹² See *Supra*, n.8.

The status of an issuer on a listing exchange, as reported by that exchange, is typically included in corporate actions products. For example, the Nasdaq Stock Exchange establishes requirements for the continued listing of issuers and standards for primary equity securities.¹⁷ Nasdaq monitors and disseminates information on financial status,¹⁸ whether there has been a downgrade, and the reason for that downgrade, as applicable.

Competitor Products

Nasdaq has identified numerous competitors in the market for corporate actions products, none of which file fee changes with the Commission as an SRO. A non-exhaustive list of vendors offering corporate actions products includes S&P Global, LSEG, Quodd, Barchart, Six Financial, Polygon.io, EDI, and FactSet. S&P Global states that its “unified Corporate Actions solution helps firms across a range of asset classes, market client types and business lines” with their corporate actions processing.¹⁹ LSEG states that its Equity Corporate Actions tracks “all stocks which are primarily listed (or quoted) on 200+ key venues”²⁰ Quodd Financial Information Services, Inc. states that it provides “comprehensive access to global corporate actions and dividend content across dozens of data elements.”²¹ Barchart.com, Inc. provides “corporate actions data on thousands of publicly-traded companies.”²² Six Financial

Information states that its corporate actions product “[c]overs more than 80 event types with the focus on the main event attributes to allow simple tracking of corporate actions.”²³ Polygon.io, Inc. provides information on “company financials, stock market holidays, [and] corporate actions.”²⁴ Exchange Data International, Ltd. states that it offers “corporate actions data from over 150 exchanges worldwide.”²⁵ FactSet Research Systems Inc. advertises that it “offers a comprehensive view of global corporate actions data.”²⁶

The New York Stock Exchange, an SRO, offers a corporate actions product that is not filed with its other SRO fees. NYSE states that its “Corporate Actions package is comprised of several reports providing over 60 different corporate actions types for all equities listed on NYSE Group (NYSE, NYSE American and NYSE Arca market centers), including but not limited to cash dividends, stock dividends, distributions, splits, new listings (IPOs), suspensions and delistings.”²⁷

In addition to offering a corporate actions product, NYSE makes exchange-specific corporate actions information, such as ex-dates and financial status, available on a public website.²⁸ NYSE’s Corporate Actions product is disseminated by NYSE in its capacity as a vendor of financial information, not in its capacity as an exchange, and is not included in the NYSE rulebook. Nasdaq’s proposal to reformulate the Daily List is modeled on this structure.

This is not an exhaustive list of products. For example, Nasdaq as a vendor of financial information makes

corporate actions information from third parties available on its website.²⁹

None of these vendors of corporate actions products publish their fees. Based on Nasdaq’s understanding of the market, the fee range for these products appears to be between \$3,000 and \$12,000 per month or more.

Publication of Exchange Information

The Exchange proposes to publish information that originates from the Exchange related to the execution of corporate actions as well as issuer status updates on a public website. This Exchange information will be published on the following three pages on NasdaqTrader.com (or a successor website): Nasdaq Ex-Date; Nasdaq Security Status Updates; and When Issued/When Distributed.

Nasdaq Ex-Date.³⁰ The Nasdaq Ex-Date will provide the execution date for dividends. The dividend Ex-Date is generally set for stocks one business day prior the record date, according to the settlement cycle, except under specified circumstances. However, there are occasions when Ex-dates are not set one business day prior to the record date, such as when a date is floating. Under those circumstances, the Ex-Date will be set by the Exchange and provided to the public on NasdaqTrader.com or a successor website.

The Nasdaq Ex-Date page will provide the following fields of information: Issue Symbol, Issuer Name, Ex Date, Record Date, and Pay Date.

Nasdaq Security Status Updates.³¹ The execution of corporate actions and issuer status under Exchange rules will be published on a page dedicated to status updates. These include security additions, anticipated additions, deletions (delistings)³² and suspensions; name and symbol changes; market center changes;³³ and financial

Warrants” (“All transactions in securities, except “cash” transactions, shall be “ex-dividend,” “ex-rights” or “ex-warrants”: (1) on the day specifically designated by Nasdaq Regulation after definitive information concerning the declaration and payment of a dividend or the issuance of rights or warrants has been received at the office of Nasdaq Regulation; or (2) on the day specified as such by the appropriate national securities exchange . . .”).

¹⁷ See, e.g., Nasdaq Stock Market Rules 5400 (Nasdaq Global Market), Section 5450 (Continued Listing Requirements and Standards for Primary Equity Securities) (setting forth a number of standards for continued listing, including standards related to market value).

¹⁸ The four basic categories of financial status are deficient, delinquent, bankrupt and normal. The deficient, bankrupt and delinquent categories are not mutually exclusive, and more than one of these categories may apply to a particular issuer.

¹⁹ See S&P Global Market Intelligence, *Corporate Actions*, available at <https://www.spglobal.com/marketintelligence/en/mi/products/corporate-actions.html>; see also S&P Global Market Intelligence, *Corporate Actions Product Brochure*, available at <https://cdn.ihsmarket.com/www/pdf/0323/SPGI-MI-Corporate-Actions-Brochure.pdf>.

²⁰ LSEG Data & Analytics, *Equity Corporate Actions*, available at <https://www.lseg.com/en/data-analytics/financial-data/corporate-actions-data/equity-corporate-actions>.

²¹ Quodd Financial Information Services, Inc., *QX Digital Platform*, available at <https://quodd.com/universe/>.

²² Barchart.com, Inc., *Corporate Actions Data*, available at <https://www.barchart.com/solutions/data/company/corporate-actions>.

²³ Six Financial Information USA Inc., *Corporate Action*, available at <https://www.six-group.com/en/products-services/financial-information/display-and-delivery-capabilities/sixflex/corporate-action.html#scrollTo=available-content>.

²⁴ Polygon.io, Inc., *Stocks API Documentation*, available at <https://polygon.io/docs/stocks/getting-started>.

²⁵ Exchange Data International, Ltd., *Worldwide Equity Corporate Actions*, available at <https://www.exchange-data.com/product/worldwide-corporate-actions-data/>.

²⁶ FactSet Research Systems Inc., *New Corporate Actions Report is Now Available in the Company/Security Tab*, available at <https://insight.factset.com/new-corporate-actions-report-is-now-available-in-the-company/security-tab>.

²⁷ New York Stock Exchange, *Corporate Actions*, available at <https://www.nyse.com/market-data/corporate-actions> (“The Corporate Actions of NYSE Group Listings provide daily and intraday event updates for securities including stock splits, dividends, rights issues, spin-offs, and much more.”); see also NYSE, *Corporate Actions for NYSE Group Listings*, available at <https://www.nyse.com/market-data/corporate-actions/corporate-actions-for-nyse-group-listings> (providing additional information about the NYSE Corporate Actions product).

²⁸ See NYSE Corporate Actions; NYSE Ex-Date Dividends.

²⁹ See QuantRocket, *Sharadar Data*, available at <https://www.quantrocket.com/sharadar/> (including corporate event data sources from SEC Form 8-K filings with history since 1993).

³⁰ See Nasdaq, *Nasdaq Ex-Date*, available at <https://www.nasdaqtrader.com/Trader.aspx?id=NASDAQ-Ex-Date&from=05%2F01%2F2024&to=05%2F22%2F2024>.

³¹ Nasdaq, *Nasdaq Security Status Updates*, available at <https://www.nasdaqtrader.com/Trader.aspx?id=NASDAQ-Security-Status-Updates&from=05%2F21%2F2024&to=05%2F21%2F2024>.

³² Securities pending suspension or delisting are also published on the Nasdaq Listing Center. See Nasdaq, *Issues Pending Suspension or Delisting*, available at <https://listingcenter.nasdaq.com/IssuesPendingSuspensionDelisting.aspx>.

³³ The three Nasdaq market centers are the Nasdaq Global Select Market, the Nasdaq Global Market, and the Nasdaq Capital Market.

status changes³⁴ (old financial status, new financial status, and downgrade reason, if applicable).

The Nasdaq Security Status Updates page will provide the following fields of information: Effective Date, Symbol, Company Name, Issue Event, Downgrade Reason, Old Financial Status, and New Financial Status.

*When Issued and When Distributed.*³⁵ Nasdaq will separately publish when issued and when distributed information for all Nasdaq listed securities. “When issued” and “when distributed” refer to transactions that are made conditionally because a security has been authorized but not yet issued or distributed, respectively. Treasury securities, stock splits, and new issues of stocks and bonds all can be traded on a when-issued or when-distributed basis. This file will identify when a security is in either of these two states.

The file will provide the following fields of information: Effective Date, Issue Name, Symbol, When Issued Flag, and When Distributed Flag.

These three pages of information, together with the corporate actions information published by issuers and available on the Commission’s website and other sources, would enable any party to assemble its own set of corporate actions information. These pages will be updated at the same time as information is updated on the Daily List. As such, Nasdaq will have no material advantage in the sale of the Daily List relative to any other vendor offering corporate actions information.³⁶ Nasdaq Ex-Date and Nasdaq Security Status will update every 15 minutes between 7:00 a.m. and 10:00 p.m. on trading days, as needed (no update will be sent if there are no changes). When Issued and When Distributed information will be updated at 8:00 a.m., 11:00 a.m., and 4:00 p.m. on trading days.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³⁸ in particular, in that it

provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed fees are an equitable allocation of reasonable dues, fees and other charges because: (i) the Daily List and Fundamental Data are subject to competition; (ii) the proposed fees are within the prevailing market price for comparable corporate actions products; (iii) exchange-specific information related to corporate actions will be available on the NasdaqTrader.com or a successor website; and (iv) customers can cancel the Daily List and Fundamental Data for any reason, including cost.

The Daily List and Fundamental Data are subject to competition.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”³⁹ Similarly, in *NetCoalition v. Securities and Exchange Commission*,⁴⁰ (“NetCoalition”), the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.⁴¹ As the court emphasized, the Commission “intended in Regulation NMS that market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”⁴²

As explained above, Nasdaq has identified numerous competitors in the

sale of corporate actions products, none of which are required to file fee changes with the Commission as an SRO, including S&P Global Corporate Actions, LSEG Equity Corporate Actions, and others. Corporate actions information is also available from the issuer, as well as in corporate filings on the SEC’s website. Information on the execution of corporate actions on the Nasdaq Exchange as well as information on issuer status will be available on NasdaqTrader.com or a successor website.

The publication of all information that originates from the Exchange on NasdaqTrader.com, together with the corporate actions information published by issuers and available on the Commission’s website and other sources, would enable any party to assemble its own set of corporate actions information. Nasdaq has no unique access to information that does not originate with the Exchange, and therefore has no inherent competitive advantage relative to any other vendor with respect to the gathering and dissemination of such information.⁴³

Fundamental Data provides security master and market summary statistics on a T+1 basis for Nasdaq securities, as explained above. This next-day information can be replicated by any vendor of market information and is therefore subject to direct competition.

Nasdaq estimates that approximately 10 percent of its customers that consume Nasdaq US equity data purchase the Daily List.

The proposed fees are within the range of prevailing market rates.

The corporate actions products listed above are not subject to publication requirements for SRO products, and their fee schedules are not published and not on a publicly available price list. Nevertheless, based on Nasdaq’s experience with and understanding of the market, monthly fees for corporate actions products appear to range between \$3,000 and \$12,000 per month or more. The proposal will raise Daily List fees to be within the range, at its lower end.

Exchange-specific information will be available on NasdaqTrader.com.

As explained above, this information will be available on three pages: Nasdaq Ex-Date; Nasdaq Security Status Updates; and a When Issued/When Distributed page.

⁴³ Moreover, corporate action information originating from Nasdaq is limited to Nasdaq-listed issuers; Nasdaq has no unique information related to issuers not listed on Nasdaq. Most vendors sell corporate actions information for companies listing on all exchanges.

³⁴ The four basic categories of financial status are deficient, delinquent, bankrupt and normal. The deficient, bankrupt and delinquent categories are not mutually exclusive, and more than one of these categories may apply to a particular issuer.

³⁵ Nasdaq, *When Issued and When Distributed Flags*, available at <https://www.nasdaqtrader.com/Dynamic/SymDir/NasdaqWhenIssueWhenDistributed.txt>.

³⁶ Corporate actions information is not time sensitive in the same way as real-time data.

³⁷ 15 U.S.C. 78f(b).

³⁸ 15 U.S.C. 78f(b)(4) and (5).

³⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”); see also Securities Exchange Act Release No. 34–79701 (December 29, 2016), 82 FR 1381 (January 5, 2017) (SR–Nasdaq–2016–175) (discussion of competition in prior Daily List filing).

⁴⁰ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

⁴¹ See *id.* at 534–535.

⁴² *Id.* at 537.

The information published on *NasdaqTrader.com* or successor website will provide materially the same information as published by NYSE. As noted above, the NYSE Corporate Actions product is not an exchange product published in NYSE's capacity as an SRO. Nasdaq understands that NYSE Corporate Actions is not filed as an SRO product because the corporate action information specific to NYSE as an SRO—related to the execution of corporate actions and issuer status—is available on the NYSE website. With this filing, Nasdaq is proposing to employ the same distribution structure currently employed by NYSE.⁴⁴

The publication of this information, together with the corporate actions information published by issuers and available on the Commission's website and other sources, would enable any party to assemble its own set of corporate actions information. Because the information available on *NasdaqTrader.com* will be updated at the same time as the Daily List, Nasdaq will have no material advantage in the sale of its corporate actions product relative to any other vendor.

Customers can cancel these products for any reason, including cost.

Any Daily List customer would be able to obtain the information contained in the Daily List with other corporate actions products, or by compiling corporate actions information using publicly available data and the information to be published on *NasdaqTrader.com*. The next-day information provided with Fundamental Data can be replicated by any vendor of market information. The Daily List and Fundamental Data can be cancelled by any customer for any reason, including cost.

No Unfair Discrimination

The Daily List and Fundamental Data are purchased by a mix of exchanges, asset managers, hedge funds, banks, and media portals. No particular category of customer is more reliant on these products than any other category, and therefore none will disparately impacted by the proposed price change. As explained above, corporate actions products are available from many vendors, and any customer can replace the Daily List with any other corporate actions product or assemble such information on its own. The same is true for Fundamental Data.

In summary, the proposed fees are an equitable allocation of reasonable dues, fees and other charges because: (i) the Daily List and Fundamental Data are subject to competition; (ii) proposed fees are within the range of fees for comparable products; (iii) exchange-specific information related to corporate actions will be available on *NasdaqTrader.com* or a successor website; and (iv) customers can cancel the Daily List and Fundamental Data for any reason, including cost. For these reasons, the Exchange has provided a substantial basis demonstrating that the fee is equitable, fair, reasonable, and not unreasonably discriminatory, and therefore consistent with and in furtherance of the purposes of the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations).

First, the Daily List can be replicated by any SRO, or any firm that compiles corporate actions information.⁴⁵ To the degree that the Daily List includes information about the Exchange's execution of corporate actions or issuer status, that same information will be publicly available on the *NasdaqTrader.com* or successor website. The remaining corporate actions information is available from issuers, on the SEC website, and other sources.

Nasdaq does not have unique access to the information that is provided through the product (except for the Exchange information that will be made publicly available), and market participants do not have an unqualified need for the information provided. Therefore, the price that Nasdaq can charge for the product is constrained by the ability of market participants to reduce their demand for the product and the ability of competitors to enter the market and profitably undercut any supracompetitive price increase.

If the price of this product were set above competitive levels, other vendors could determine whether the product was sufficiently attractive to their own

customers to warrant incurring the costs associated with purchasing it for distribution. Since distributors are in competition with one another to attract customers, they must continually evaluate their cost base and the value of their product offering to customers to determine whether they allow them to maximize profitability. This competition for customers provides another check on the price for proprietary data products such as the Daily List. To the extent that other exchanges seek to develop and market a corporate actions product, they are free to do so.

With respect to Fundamental Data, nothing in the proposal impedes the ability of any other SRO from introducing a similar product.

Intra-Market Competition

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because the Daily List and Fundamental Data are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase these products can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁴⁶ 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

⁴⁴ Nasdaq is considering submission of a filing to withdraw the Daily List from the Nasdaq rulebook on a future date. This filing, however, is limited to bringing Daily List fees more in line with prevailing market prices.

⁴⁵ As noted above, NYSE does not file its corporate actions product as an SRO product, and the other vendors of corporate actions products are not SROs.

⁴⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2024-027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the 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-2024-027 and should be submitted on or before July 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14377 Filed 6-28-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100426; File No. SR-CBOE-2024-027]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

June 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 12, 2024, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, 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 its Fees Schedule, effective June 3, 2024.³ Specifically, the Exchange proposes to adopt and amend certain fees related to transactions in Mini-SPX Index ("XSP") options. Specifically, the proposed rule change amends and adopts certain fees for XSP in the Rate Table for All Products Excluding Underlying Symbol List A, as follows:

- Adopts fee code MP, appended to all Market-Maker (capacity "M") orders in XSP that are executed manually (*i.e.*, open outcry) and assesses a fee of \$0.15 per contract; and amends fee code MC, currently appended to all Market-Maker (capacity "M") orders in XSP that are contra customer (executed manually and electronically) and assesses a fee of \$0.15 per contract, to apply only to Market-Maker (capacity "M") orders in XSP that are contra customer and that are executed electronically.
- Amends fee code MX, currently appended to all Market-Maker (capacity "M") orders in XSP contra to non-customers and assesses a fee of \$0.09 per contract, to apply to all Market-Maker orders in XSP contra to non-customers that add liquidity and that are executed electronically.
- Adopts fee code MY, appended to all Market-Maker (capacity "M") in XSP contra to non-customers that remove liquidity and that are executed electronically and assesses a fee of \$0.14 per contract.
- Amends fee code XF, appended to all Clearing Trading Permit Holders ("TPHs") (capacity "F") and Non-Clearing TPH Affiliates (capacity "L") orders in XSP and assesses a fee of \$0.13, to apply to all Clearing Trading Permit Holders ("TPHs") (capacity "F"), Non-Clearing TPH Affiliates (capacity "L"), Broker-Dealer (capacity "B"), Joint Back-Office (capacity "J"), Non-TPH Market-Maker (capacity "N"), and Professional (capacity "U") (collectively, "Non-Market Makers, Non-Customers") orders in XSP contra to a customer or contra to a non-customer that add liquidity and to assess a fee of \$0.30 per contract.
- Amends fee code XB, appended to all Broker-Dealer (capacity "B"), Joint Back-Office (capacity "J"), Non-TPH

³ The Exchange initially filed the proposed fee changes on June 3, 2024 (SR-CBOE-2024-024). On June 11, 2024, the Exchange withdrew that filing and submitted SR-CBOE-2024-026. On June 12, 2024, the Exchange withdrew that filing and submitted this proposal.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴⁷ 17 CFR 200.30-3(a)(12).

Market-Maker (capacity “N”), and Professional (capacity “U”) orders in XSP and assesses a fee of \$0.17 per contract, to apply to all Non-Market Maker, Non-Customer orders in XSP contra to a non-customer that remove liquidity and to assess a fee of \$0.50 per contract.

Adopts fee code XN, appended to all Non-Market Maker, Non-Customer orders in XSP that are executed manually (*i.e.*, open outcry) and assesses a fee of \$0.30 per contract.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the proposed fees for Market-Maker and Non-Customer, Non-Market Maker orders in XSP are reasonable, equitable and not unfairly discriminatory.

The Exchange believes the proposed changes to the fee structure for Market-Maker orders in XSP are reasonable. The proposed fees, in general, align with current fees for Market-Maker orders in XSP, with minor distinctions based on execution method, capacity of the

contra-party, and orders that add liquidity and those that remove liquidity. The Exchange notes that it is not novel to charge different fees based on capacity of contra-party, and that current fees for Market-Maker orders in XSP contain such a distinction. Further, other exchanges offer varying fees based on whether an order adds or removes liquidity.⁸

The Exchange believes it is reasonable to assess lower fees for Market-Maker orders in XSP that are contra to a non-customer and add liquidity, and are executed electronically, as such changes are designed to incentivize an increase in non-customer liquidity-adding volume in XSP on the Exchange. The Exchange believes that incentivizing more non-customer orders in XSP will create more trading opportunities, which, in turn attracts Market-Makers. A resulting increase in Market-Maker activity facilitates tighter spreads, which may lead to additional increase of order flow in XSP from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem. Further, the Exchange believes that the changes are reasonable and that the fees, even as amended, will continue to incentivize TPHs to send additional Market-Maker orders to the Exchange.

Additionally, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees, in general, to Market-Makers as compared to other market participants other than Customers because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, these lower fees offered to Market-Makers are intended to incent Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants.

The Exchange also believes the proposed changes to the fee structure for Non-Customer, Non-Market Maker orders in XSP are reasonable. As noted above, it is not novel to charge different fees based on capacity of contra-party, and other exchanges offer varying fees based on whether an order adds or removes liquidity.⁹ The Exchange believes assessing higher fees in general for Non-Customer, Non-Market Maker orders is reasonable, equitable, and non-

discriminatory because, as noted above, the obligations and circumstances between market participants differ. The Exchange believes assessing a higher fee for Non-Customer, Non-Market Maker XSP orders contra a non-customer that remove liquidity and are executed electronically is reasonable because it provides an incentive to maintain non-customer liquidity at the Exchange, thereby promoting price discovery and enhancing order execution opportunities for all TPHs. Similarly, the Exchange believes assessing a lower fee for Non-Customer, Non-Market Maker XSP orders contra to a customer or contra to a non-customer that add liquidity and are executed electronically is reasonable because it provides an incentive to add liquidity at the Exchange, including in customer volume, thereby promoting price discovery and enhancing order execution opportunities for all TPHs. Finally, while the fees proposed apply to an Exchange proprietary product, which are traded exclusively on the Exchange, the Exchange notes that the proposed fees are generally in line with the options trading fees of at least one other exchange.¹⁰

The Exchange believes that the proposed fees for Market-Maker and Non-Customer, Non-Market Maker orders in XSP are equitable and not unfairly discriminatory because the proposed fees will apply automatically and uniformly to all Market-Maker and Non-Customer, Non-Market Maker orders in XSP, as applicable. The Exchange notes that all fee amounts applicable to Market-Makers will be applied equally to all Market-Makers, *i.e.*, all Market Makers will be assessed the same amount. Similarly, the Exchange notes that the XSP fee amounts for each separate type of other market participant will be assessed equally to all such market participants, *i.e.*, all Non-Customer and Non-Market-Maker orders will be assessed the same amount.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the XSP fee amounts for each separate type of market participants will

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ *Id.*

⁷ 15 U.S.C. 78f(b)(4).

⁸ See EDGX Options Fees Schedule and BZX Options Fees Schedule.

⁹ See EDGX Options Fees Schedule and BZX Options Fees Schedule.

¹⁰ See BOX Fees Schedule, Section IV(A).

be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, the obligations and circumstances between these market participants differ, as discussed above. For example, Market-Makers have quoting obligations that are not applicable to other market participants. Further, the proposed fees structure for XSP is intended to encourage more trading of XSP, which brings liquidity to the Exchange and benefits all market participants.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees assessed apply to an Exchange proprietary product, which are traded exclusively on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2024-027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2024-027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the 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-CBOE-2024-027 and should be submitted on or before July 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14385 Filed 6-28-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100427; File No. SR-C2-2024-012]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Provide a Temporary Pricing Incentive Program on Historical Open-Close Data

June 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 13, 2024, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the "Exchange" or "C2 Options") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), at the Exchange's Office of the Secretary, 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to Exchange Trading Permit Holders and non-Trading Permit Holders that purchase \$20,000 or more of ad hoc purchases historical Open-Close Data, effective June 4, 2024 through June 30, 2024.³

By way of background, the Exchange currently offers End-of-Day ("EOD") and Intraday Open-Close Data (collectively, "Open-Close Data"). EOD Open-Close Data is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The EOD Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange also offers Intraday Open-Close Data, which provides similar information to that of EOD Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.⁴ The Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199

contracts). The Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. All Open-Close Data products are completely voluntary products, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Open-Close Data available for purchase to Trading Permit Holders and non-Trading Permit Holders on the LiveVol DataShop website (datashop.cboe.com). Customers may currently purchase Open-Close Data on a subscription basis (monthly or annually) or by ad hoc request for a specified month (historical file, e.g., request for Intraday Open-Close Data for month of December 2023 or End-of-Day Open-Close Data for month of December 2023). An ad-hoc request can be for any number of months for which the data is available.

Open-Close Data is subject to direct competition from similar end-of-day and intraday options trading summaries offered by several other options exchanges.⁵ All of these exchanges offer essentially the same end-of-day and intraday options trading summary information.

The Exchange proposes to provide a temporary pricing incentive program in which Trading Permit Holders or Non-Trading Permit Holders that purchase historical Open-Close Data will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of historical Open-Close Data of \$20,000 or more.⁶ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the

discount cannot be combined with any other discounts offered by the Exchange, including the academic discount provided for Qualifying Academic Purchasers of historical Open-Close Data. The Exchange intends to introduce the discount program beginning June 4, 2024, with the program remaining in effect through June 30, 2024. The Exchange also notes that it previously adopted the same discount program last year and proposes to update the Fees Schedule with the new program dates accordingly.⁷

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes the proposed fee changes will further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. Open-Close Data is designed to help investors understand underlying market trends to improve the quality of

³ The Exchange initially filed the proposed change on June 4, 2024 (SR-C2-2024-009). On June 13, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current "snapshot" and all previous "snapshots."

⁵ These substitute products are: Nasdaq PHLX Options Trade Outline, Nasdaq Options Trade Outline, ISE Profile, GEMX Trade Profile data; open-close data from Cboe Options, BZX and EDGX; Open Close Reports from MIAAX Options, Pearl, and Emerald; and NYSE Options Open-Close Volume Summary.

⁶ The discount will apply on an order-by-order basis. To qualify for the discount, an order must contain End-of-Day Ad-hoc Requests (historical data) and/or Intraday Ad-hoc Requests (historical data) and must total \$20,000 or more; the Exchange will not aggregate purchases made throughout a billing cycle for purposes of the incentive program. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, i.e. receive a 20% discount of \$5,000).

⁷ See Securities Exchange Act Release No. 99025 (November 28, 2023), 88 FR 84007 (December 1, 2023) (SR-C2-2023-023).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

investment decisions. Indeed, purchasers of the data may be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes Open-Close Data provides a valuable tool that purchasers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer same type of data content through end-of-day or intraday reports.¹¹

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.¹² The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.”¹³ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of historical Open-Close Data.

The Exchange believes that the proposed incentive program for any Trading Permit Holders or non-Trading Permit Holders who purchases historical Open-Close Data is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Open-Close Data. The Exchange believes the

proposed discount is reasonable as it will give purchasers the ability to use and test the historical Open-Close Data at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the historical Open-Close Data. Further, the proposed discount is intended to promote increased use of the Exchange’s historical Open-Close Data by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Trading Permit Holders and non-Trading Permit Holders who purchase historical Open-Close Data. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Open-Close Data, and the Exchange is not required to make the historical Open-Close Data available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange previously adopted a similar discount program last year.¹⁴

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, Open-Close Data is subject to direct competition from several other options exchanges that offer substitutes to Open-Close Data. Moreover, purchase of Open-Close Data is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this

competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Open-Close Data.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-C2-2024-012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

¹¹ See supra note 4.

¹² See Choe Global Markets U.S. Options Market Month-to-Date Volume Summary (June 3, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁴ See Securities Exchange Act Release No. 99025 (November 28, 2023), 88 FR 84007 (December 1, 2023) (SR-C2-2023-023).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

All submissions should refer to file number SR-C2-2024-012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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-C2-2024-012 and should be submitted on or before July 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14386 Filed 6-28-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100420; File No. SR-CboeBZX-2023-101]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Pando Asset Spot Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

June 25, 2024.

On December 5, 2023, Cboe BZX Exchange, Inc. ("BZX" or "Exchange") filed with the Securities and Exchange

Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the Pando Asset Spot Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on December 22, 2023.³ On February 1, 2024, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵ On March 21, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On June 6, 2024, the Commission designated a longer period for Commission action on the proposed rule change.⁸ On June 24, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to list and trade shares of the Pando Asset Spot Bitcoin Trust (the "Trust"),⁹ under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The text of the proposed rule change is also available on the Exchange's website

(http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, 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

This Amendment No. 1 to SR-CboeBZX-2023-101 amends and replaces in its entirety the proposal as originally submitted on December 5, 2023. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),¹⁰ which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.¹¹ Pando Asset AG is the Sponsor ("Sponsor"). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S-1 (the "Registration Statement").¹² Coinbase Custody Trust Company, LLC (the "Bitcoin Custodian"), which is a third-party U.S.-based trust company and

¹⁰ The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

¹¹ Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values, and Verified Intraday Indicative Values (as applicable), or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities (collectively, "Continued Listing Representations") shall constitute continued listing requirements for the securities listed on the Exchange.

¹² See Form S-1 Registration Statement filed on November 29, 2023 (Registration No. 333-275781). The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99197 (Dec. 18, 2023), 88 FR 88668. Comments on the proposed rule change are available at <https://www.sec.gov/comments/sr-cboebzx-2023-101/sr-cboebzx2023101.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99460, 89 FR 8472 (Feb. 7, 2024).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 99833, 89 FR 21310 (Mar. 27, 2024).

⁸ See Securities Exchange Act Release No. 100289, 89 FR 49926 (June 12, 2024).

⁹ The Trust was formed as a Delaware statutory trust on November 16, 2023, and is operated as a grantor trust for U.S. Federal tax purposes. The Trust has no fixed termination date.

¹⁷ 17 CFR 200.30-3(a)(12).

qualified custodian, will be responsible for custody of the Trust's bitcoin holdings and U.S. Bank will be the custodian for the Trust's cash holdings, if any (the "Cash Custodian" and together with the Bitcoin Custodian, the "Custodians").

As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts,¹³ 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 (the "CFTC") regulated futures market.¹⁵

¹³ See Exchange Rule 14.11(f)(1).

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").

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–

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 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 Currency¹⁶ 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."¹⁷

As such, the regulated market of significant size test does not require that the spot bitcoin 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 Chicago

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 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 Exchange Rule 14.11(e)(5).

¹⁷ See Winklevoss Order at 37592.

Mercantile Exchange (“CME”) bitcoin futures (“Bitcoin Futures”) market 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 CME Bitcoin Futures that are registered under the Securities Act of 1933.¹⁸ In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures; a position that represents a departure from prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (“Spot Bitcoin ETPs”) that use the exact same pricing methodology as the CME Bitcoin Futures. In the recently decided *Grayscale Investments, LLC v. Securities and Exchange Commission*,¹⁹ however, the court addressed 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 further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved, consistent with the Teucrium precedent and in view of the court’s findings relating to the Grayscale Order.

Finally, as discussed in greater detail below, by using professional custodians and other service providers, the Trust provides investors interested in exposure to bitcoin via the securities markets with important protections that are not always available to investors that invest directly in bitcoin, including protection against counterparty insolvency, cyber attacks, and other risks. For example, an exchange-traded vehicle such as the Trust, which will be subject to the registration and periodic reporting requirements of the 1933 Act and the Exchange Act, would offer U.S.

investors an alternative to directing their bitcoin investments into loosely regulated offshore vehicles (including loosely regulated centralized trading platforms that have since faced bankruptcy proceedings or other insolvencies).

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or “blockchain,” on which all bitcoin transactions are recorded (the “Bitcoin Network” or “Bitcoin”). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It’s generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value. The first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.²¹ At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market capitalization of all bitcoin in existence at that time was approximately \$10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.²² Similarly, regulated U.S. Bitcoin Futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,²³ but had not engaged

in significant enforcement actions in the space. The New York Department of Financial Services (“NYDFS”) adopted its final “BitLicense” regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.²⁴ While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only \$60 million in assets.²⁵ There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the staff of the Commission noted in a letter to the Investment Company Institute (“ICI”) and Securities Industry and Financial Markets Association (“SIFMA”) that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.²⁶ The digital assets financial ecosystem, including bitcoin, has progressed significantly in the intervening years. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities²⁷ and shares in investment vehicles holding Bitcoin Futures.²⁸ Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other

future delivery are presently or in the future dealt in.” 7 U.S.C. 1a(9). The definition of a ‘commodity’ is broad. See, e.g., *Board of Trade of City of Chicago v. SEC*, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.”

²⁴ A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.

²⁵ Data as of March 31, 2016 according to publicly available filings. See Bitcoin Investment Trust Form S-1, dated May 27, 2016, available: <https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/15884891.htm>.

²⁶ See letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), available at <https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm>.

²⁷ See Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333-233363), available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.

²⁸ See Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Trust Registration, available at: <https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm>.

¹⁸ 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”).

¹⁹ *Grayscale Investments, LLC v. Securities and Exchange Commission*, et al., Case No. 22-1142 (the “Grayscale Order”).

²⁰ *Id.*

²¹ See Winklevoss Order.

²² Digital assets that are securities under U.S. law are referred to throughout this proposal as “digital asset securities.” All other digital assets, including bitcoin, are referred to interchangeably as “cryptocurrencies” or “virtual currencies.” The term “digital assets” refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

²³ See “In the Matter of Coinflip, Inc.” (“Coinflip”) (CFTC Docket 15-29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: “Section 1a(9) of the CEA defines ‘commodity’ to include, among other things, ‘all services, rights, and interests in which contracts for

⁴¹ See Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) <https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/fileame1.pdf>.

discounts;⁴² (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks;⁴³ or (iv) purchasing Bitcoin Futures exchange-traded funds (“ETFs”), as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to ETPs 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 bitcoin exposure, as described above.⁴⁴

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,⁴⁵ Celsius Network LLC,⁴⁶ BlockFi Inc.,⁴⁷ and Voyager Digital Holdings, Inc.⁴⁸ have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin 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 Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the crypto asset space. As further described below, 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 bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than

relying on either more expensive, riskier U.S. based products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the “1940 Act”), and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (“Bitcoin Futures ETFs”). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing an investment view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering Bitcoin ETP proposals.

As discussed further below, the standard applicable to Bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.⁴⁹ Leaving aside the analysis of that standard until later in this proposal,⁵⁰ the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the

⁴² The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Funds went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Funds only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Funds, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium/discount volatility.

⁴³ A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as \$5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a Bitcoin ETP. See e.g., “7 public companies with exposure to bitcoin” (February 8, 2021) available at: <https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html>; and “Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas” (February 19, 2021) available at: <https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself.html>.

⁴⁴ 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 Bitcoin ETPs.

⁴⁵ See FTX Trading Ltd., et al., Case No. 22–11068.

⁴⁶ See Celsius Network LLC, et al., Case No. 22–10964.

⁴⁷ See BlockFi Inc., Case No. 22–19361.

⁴⁸ See Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

⁴⁹ See Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that “when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.” As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be “regulated” in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

⁵⁰ As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

Commission approving this and other Spot Bitcoin ETP proposals:

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 Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts, whether that attempt is made by directly trading on the CME Bitcoin Futures market or indirectly by trading outside of the CME Bitcoin 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.⁵¹

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts. . . indirectly by trading outside of the CME Bitcoin 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 Bitcoin Futures.

This was further acknowledged in the “Grayscale lawsuit”⁵² 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 Bitcoin Futures.

The structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.⁵³ Specifically, the cost of

rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, which would also materially change the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly sub-optimal as the sole exchange traded vehicle structure for U.S. investors that are looking for long-term exposure to bitcoin and could, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs. The Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that an objective review of the proposals to list Spot Bitcoin ETPs compared to and in view of the Bitcoin Futures ETFs and the Bitcoin Futures Approvals as well as limitations of existing approved product structures, would lead to the conclusion that Spot Bitcoin ETPs would benefit U.S. investors and should be available to U.S. investors. As such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. In summary, U.S. investors lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs

would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.⁵⁴ The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 Bitcoin Futures contracts traded in April 2023 (approximately \$20.7 billion) compared to 193,182 (\$5 billion), 104,713 (\$3.9 billion), 118,714 (\$42.7 billion), and 111,964 (\$23.2 billion) contracts traded in April 2019, April 2020, April 2021, and April 2022, respectively.⁵⁵

⁵⁴ According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot trading platforms during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital. For additional information, refer to <https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html>.

⁵⁵ Source: CME, Yahoo Finance 4/30/23.

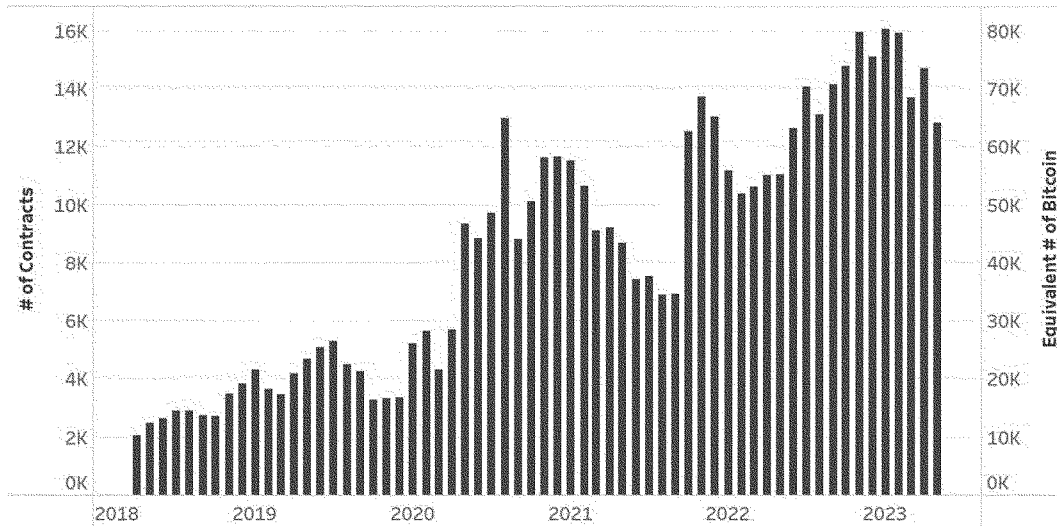
⁵¹ See Teucrium Approval at 21679.

⁵² *Grayscale Investments, LLC v. Securities and Exchange Commission*, et al., Case No. 22-1142.

⁵³ See e.g., “Bitcoin ETF’s Success Could Come at Fundholders’ Expense,” Wall Street Journal (October 24, 2021), available at: <https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580>;

“Physical Bitcoin ETF Prospects Accelerate,” *ETF.com* (October 25, 2021), available at: https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&_cf_chl_jschl_tk__=pmd JsK.fjXz9eAQW9zol0qpzhXDrrlpIV doCloLXbLj44-1635476946-0-gqNtZGzNAPcJcnBsZQqI.

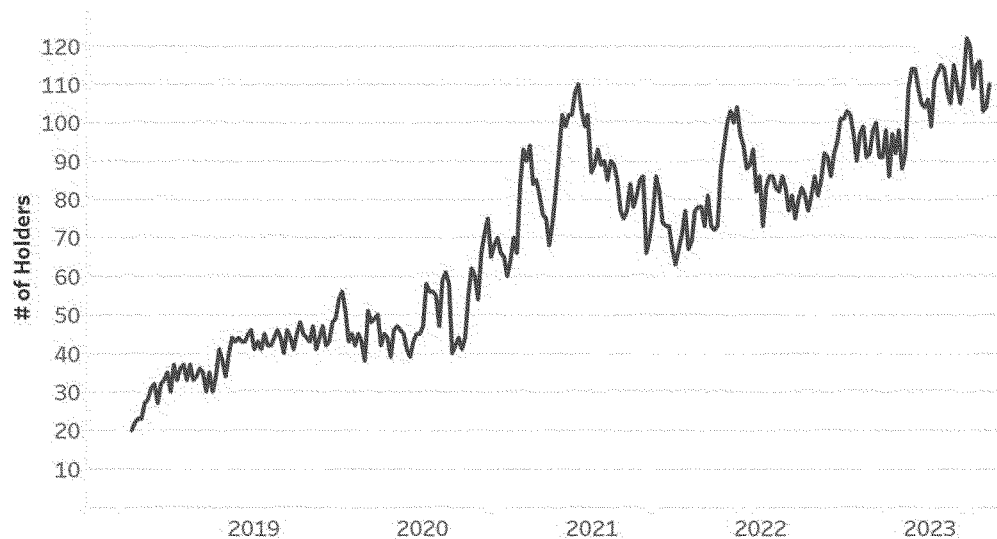
CME Bitcoin Futures Open Interest (OI)



The number of large open interest holders⁵⁶ and unique accounts trading Bitcoin Futures have both increased,

even in the face of heightened bitcoin price volatility.

CME Bitcoin Futures Large Open Interest Holders (LOIH)

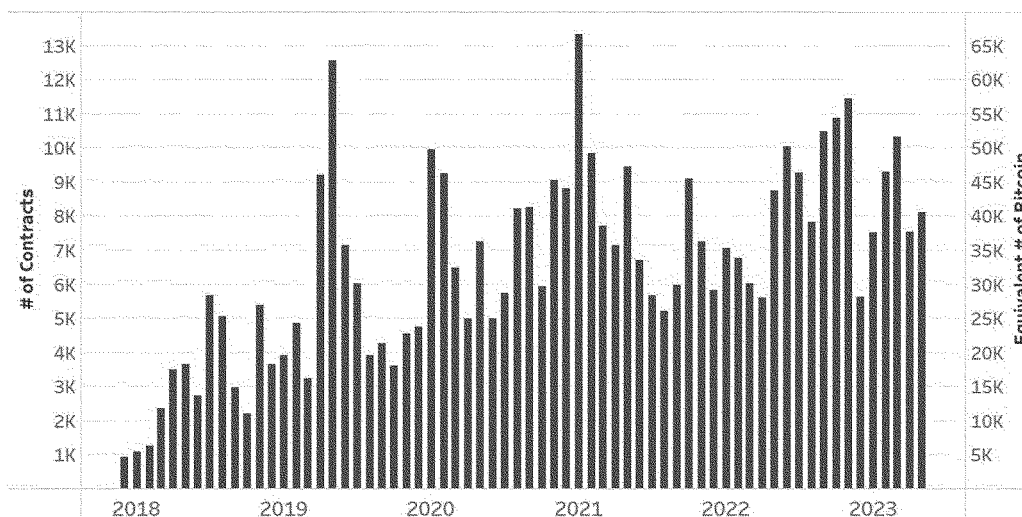


⁵⁶ A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which

is the equivalent of 125 bitcoin. At a price of approximately \$29,268.81 per bitcoin on 4/30/2023,

more than 100 firms had outstanding positions of greater than \$3.65 million in Bitcoin Futures.

CME Bitcoin Futures Average Daily Volume (ADV)



The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that Bitcoin Futures lead the bitcoin spot market in price formation.⁵⁷

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,⁵⁸ including Commodity-Based

Trust Shares,⁵⁹ 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;⁶⁰ and

⁵⁹ Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

⁶⁰ As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin 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 bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin 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 bitcoin trading platform 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.

(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 and that this filing sufficiently demonstrates that the CME Bitcoin 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 place⁶¹ with a regulated

⁶¹ 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

⁵⁷ See Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically "Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares"); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). See also Hu, Y., Hou, Y. and Oxley, L. (2019). "What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective" (available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/>). This academic research paper concludes that "There exist no episodes where the Bitcoin spot market dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective."

⁵⁸ See Exchange Rule 14.11(f).

market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (“ISG”).⁶² The only remaining issue to be addressed is whether the Bitcoin 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.⁶³

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.⁶⁴

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index⁶⁵) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. As such, the

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”).

⁶² For a list of the current members and affiliate members of ISG, see www.isgportal.com.

⁶³ See Wilshire Phoenix Disapproval.

⁶⁴ 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.

⁶⁵ As further described below, the “Index” for the Trust is the CME CF Bitcoin Reference Rate.

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 trading of the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force influencing prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant daily trading volume in the Bitcoin Futures market, the size of bitcoin’s market capitalization, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. As the court found in the Grayscale Order, the Exchange and the Sponsor submit that “[b]ecause the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.”

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

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.

(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 bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors including in connection with roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed for this proposal to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now 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 to access bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk and benefit U.S. investors by: (i) reducing premium and discount volatility as compared to OTC investment vehicles; (ii) increasing competitive pressure on management fees resulting in fee compression/reductions; (iii) reducing risks and costs as compared to those associated with investing in Bitcoin Futures ETFs and operating companies that represent imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodizing spot bitcoin.

Pando Asset Spot Bitcoin Trust

Wilmington Trust is the trustee (“Trustee”). The Bitcoin Custodian will be responsible for safekeeping of the Trust’s bitcoin. U.S. Bank serves as the Trust’s administrator (the “Administrator”), transfer agent (the “Transfer Agent”), and will act as the Cash Custodian of the Trust’s cash and cash equivalents.⁶⁶ As noted above, Coinbase Custody Trust Company, LLC is the Bitcoin Custodian and will be responsible for safekeep of the Trust’s bitcoin.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust. The Trust’s assets will consist only of bitcoin, cash, and cash equivalents.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,⁶⁷ nor a commodity pool for purposes of the Commodity Exchange Act (“CEA”), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares. The Trust will not acquire and will disclaim any incidental right (“IR”) or IR asset received, for example as a result of forks or airdrops, and such assets will not be taken into account for purposes of determining NAV.

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares (a “Creation Basket”) at the Trust’s net asset value (“NAV”). Authorized participants will deliver, or facilitate the delivery of, cash to the Trust’s account with the Cash Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Cash Custodian, will deliver cash to such authorized participants

⁶⁶ Cash equivalents are short-term instruments with maturities of less than 3 months.

⁶⁷ 15 U.S.C. 80a–1.

when they redeem Shares. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to generally reflect the performance of the price of bitcoin before payment of the Trust's expenses. In seeking to achieve its investment objective, the Trust will hold only bitcoin, cash, and cash equivalents. The Trust will value its Shares daily based on the value of bitcoin as reflected by the Index, which is an independently calculated value based on an aggregation of executed trade flow of major bitcoin spot trading platforms. Specifically, the Index is calculated based on certain transactions of all of its constituent bitcoin trading platforms, which are currently Bitstamp, Coinbase, itBit, Kraken, Gemini, and LMAX Digital, and which may change from time to time. If the Index is not available or the Sponsor determines, in its sole discretion, that the Index should not be used, the Trust's holdings may be fair valued in accordance with the policy approved by the Sponsor.⁶⁸

The Index

As described in the Registration Statement, the Trust will value its Shares daily based on the value of bitcoin as reflected by the Index. The Index is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. The Index uses the same methodology as the CME CF Bitcoin Reference Rate ("BRR"), including utilizing the same constituent bitcoin trading platforms, which is the underlying rate to determine settlement of CME Bitcoin Futures contracts, except that the Index is calculated as of 4 p.m. ET, whereas the BRR is calculated as of 4 p.m. London time. The Index is designed based on the International Organization of Securities Commissions ("IOSCO") Principals for Financial Benchmarks. The

administrator of the Index is CF Benchmarks Ltd. (the "Index Provider").

The Index was created to facilitate financial products based on bitcoin. It serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. ET. The Index, which has been calculated and published since February 28, 2022, aggregates the trade flow of several bitcoin trading platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin at 4:00 p.m. ET. Specifically, the Index is calculated based on the "Relevant Transactions" (as defined below) of all of its constituent bitcoin trading platforms, which are currently Coinbase, Bitstamp, Kraken, itBit, LMAX Digital and Gemini (the "Constituent Platforms"), as follows:

- All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
- The list is partitioned by timestamp into 12 equally-sized time intervals of 5 (five) minute length.
- For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.*, across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
- The Index is then determined by the equally-weighted average of the volume medians of all partitions.

The Index does not include any futures prices in its methodology. 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 Platform in the BTC/USD pair that is reported and disseminated by a Constituent Platform through its publicly available Application Programming Interface and observed by the Index Provider.

The Sponsor believes that the use of the Index is reflective of a reasonable valuation of the average spot price of bitcoin and that resistance to manipulation is a priority aim of its design methodology. The methodology: (i) takes an observation period and divides it into equal partitions of time; (ii) then calculates the volume-weighted median of all transactions within each partition; and (iii) the value is determined from the arithmetic mean of the volume-weighted medians, equally weighted. By employing the foregoing steps, the Index thereby seeks to ensure that transactions in bitcoin conducted at

outlying prices do not have an undue effect on the value of the Index, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the Index value, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the Index value.

In addition, the Sponsor notes that an oversight function is implemented by the Index Provider in seeking to ensure that the Index is administered through codified policies for Index integrity.

Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

Net Asset Value

NAV means the total assets of the Trust (which includes bitcoin, cash and cash equivalents) less total liabilities of the Trust. The Administrator will determine the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the price set by the Index as of 4:00 p.m. ET. The Administrator also determines the NAV per Share.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV per Share and the reported BZX Official Closing Price;⁶⁹ (b) the BZX Official Closing Price in relation to the NAV per Share as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX Official Closing Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned

⁶⁸ Any alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

⁶⁹ As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

information will be published as of the close of business available on the Trust's website at <https://puglisiassoc.com>, or any successor thereto. The Trust will also disseminate its holdings on a daily basis on its website.

The Intraday Indicative Value ("IIV") will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day, which is based on the CME CF Bitcoin Real Time Index ("BRTI"). The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. Index data, the Index value, and the description of the Index are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's BZX Official Closing Price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information

regarding the Shares will be disseminated through the facilities of the CTA.

The Bitcoin Custodian

The Bitcoin Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Bitcoin Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The Bitcoin Custodian will keep a substantial portion of the private keys associated with the Trust's bitcoin in "cold storage"⁷⁰ or similarly secure technology (the "Cold Vault Balance"). The hardware, software, systems, and procedures of the Bitcoin Custodian may not be available or cost-effective for many investors to access directly. Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor, acting alone or together, will be able to access or use any of the private keys that hold the Trust's bitcoin.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares that are based on the quantity of bitcoin attributable to each Share of the Trust (e.g., a Creation Basket) at the NAV. The authorized participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving bitcoin as part of the creation or redemption process. The Trust will create Shares by receiving bitcoin from a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will

⁷⁰ The term "cold storage" refers to a safeguarding method by which the private keys corresponding to bitcoins 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.

not be acting as an agent of the authorized participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the authorized participant with respect to the delivery of the bitcoin to the Trust. The Trust will redeem shares by delivering bitcoin to a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting the third party to receive the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the authorized participant with respect to the receipt of the bitcoin from the Trust.

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders for cash transaction Creation Baskets must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of cash required is based on the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 p.m. ET on the date the order to purchase is properly received. The Administrator determines the quantity of bitcoin associated with a Creation Basket for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Basket.

The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The Sponsor (including its delegates) will maintain ownership and control of the Trust's bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A-3 under the Act. A minimum of

100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and information about the NAV and the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity⁷¹ deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), 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 in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity 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 this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a member, as well as a subsidiary or affiliate of a member that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the

Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

If the IIV or the value of the Index 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 Index occurs. If the interruption to the dissemination of the IIV or the value of the Index 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.

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. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01 where the price is greater than \$1.00 per share or \$0.0001 where the price is less than \$1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents 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

⁷¹ For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. See Coinflip.

Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, CME Bitcoin Futures, or any other bitcoin derivative with other markets and other entities that are members of the ISG, and the Exchange, or FINRA on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, CME Bitcoin Futures, or any other bitcoin derivative from such markets and other entities.⁷² The Exchange may obtain information regarding trading in the Shares, CME Bitcoin Futures, or any other bitcoin derivative via 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.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Sponsor 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 Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Creation Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares

outside of Regular Trading Hours⁷³ when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of CME Bitcoin Futures contracts and options on CME Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁷⁴ in general and Section 6(b)(5) of the Act⁷⁵ 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, including Commodity-Based Trust Shares, 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;⁷⁶ 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 and that this filing, in conjunction with precedent filings, sufficiently demonstrates that the CME Bitcoin 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 place⁷⁷ with a regulated

“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 bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging and impractical. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platform because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin 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 bitcoin trading platform 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.

⁷⁷ 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

Continued

⁷² For a list of the current members and affiliate members of ISG, see www.isgportal.com.

⁷³ Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern time.

⁷⁴ 15 U.S.C. 78f.

⁷⁵ 15 U.S.C. 78f(b)(5).

⁷⁶ As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that

market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the Bitcoin 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.⁷⁸

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.⁷⁹

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. As such, the

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 *Wilshire Phoenix Disapproval*.

⁷⁸ *Id.*

⁷⁹ 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.

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.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant influence on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant daily trading volume in the Bitcoin Futures market, the size of bitcoin’s market capitalization, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. As the court found in the Grayscale Order, the Exchange and the Sponsor submit that “[b]ecause the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.”

(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 in this case, in addition to the existence of a surveillance sharing agreement that meets the Commission’s previously articulated standards.

(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 bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors including in connection with roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed for this proposal to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such

concerns are now 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 to access bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk and benefit U.S. investors by: (i) reducing premium and discount volatility as compared to OTC investment vehicles; (ii) increasing competitive pressure on management fees resulting in fee compression/reductions; (iii) reducing risks and costs as compared to those associated with investing in Bitcoin Futures ETFs and operating companies that represent imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodial spot bitcoin.

Commodity-Based Trust Shares

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 Exchange Rule 14.11(e)(4). 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 Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin 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 bitcoin and will be available regarding the Trust and

the Shares. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV per Share and the reported BZX Official Closing Price; (b) the BZX Official Closing Price⁸⁰ in relation to the NAV per Share as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX Official Closing Price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Trust's website at <https://puglisiassoc.com/>, or any successor thereto. The Trust will also disseminate its holdings on a daily basis on its website.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day, which is based on the CME CF Bitcoin Real Time Index ("BRTI"). The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. Index data, the Index value, and the description of the Index are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarkmarks.com>.

⁸⁰ As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's BZX Official Closing Price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

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 CME Bitcoin 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.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed herein, this growth investor protection concerns need to be reevaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. The Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

Finally, the Exchange believes this proposal should be approved as it is similar to other proposals to list spot bitcoin ETFs, which were recently approved by the Commission.⁸¹

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 an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CboeBZX-2023-101. 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

⁸¹ See Securities Exchange Act Release No. 99306 (January 10, 2024) 89 FR 3008 (January 17, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units).

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-CboeBZX-2023-101 and should be submitted on or before July 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸²

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14379 Filed 6-28-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100421; File No. SR-NYSE-2024-37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

June 25, 2024.

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 June 12, 2024, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have

been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule ("Fee Schedule") regarding colocation services and fees to provide Users with wireless connectivity to additional market data feeds. 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 Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to additional market data feeds.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the "Existing Third Party Data"), and wired

connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections ("Connectivity") to four additional market data feeds (together, the "Proposed Third Party Data"):

- MIAx Pearl Equities Depth of Market Feed ("MIAx DoM"),⁶
- Nasdaq BX TotalView-ITCH FPGA,⁷
- Nasdaq PSX TotalView, and
- Nasdaq PSX TotalView-ITCH FPGA.⁸

As with most other Existing Third Party Data,⁹ the monthly charge for Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is applicable to Connectivity to the Proposed Third Party Data.

Users would be offered Connectivity to Proposed Third Party Data through connections into the colocation center in the Mahwah, New Jersey data center ("MDC").¹⁰

⁵ See Securities Exchange Act Release No. 99806 (March 20, 2024), 89 FR 21055 (March 26, 2024) (SR-NYSE-2024-15).

⁶ As described by MIAx PEARL, LCC, "[t]he [MIAx] DoM feed is a data feed that contains the displayed price and size of each order entered on MIAx PEARL Equities, as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages." Securities Exchange Act Release No. 91073 (February 5, 2021), 86 FR 9096, 9100 (February 11, 2021) (SR-PEARL-2021-02).

⁷ The difference between the Nasdaq BX TotalView feed and the Nasdaq BX TotalView-ITCH feed, which is part of the Existing Third Party Data, is the delivery mechanism: the data is the same. As described by Nasdaq BX, Inc., "BX TotalView is a real-time market data product that provides full order depth using a series of order messages to track the life of customer orders in the BX market, as well as trade data for BX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages." Securities Exchange Act Release No. 98158 (August 17, 2023), 88 FR 57505 (August 23, 2023) (SR-BX-2023-020), at 57506.

⁸ According to Nasdaq PHLX LLC, "PSX TotalView is a real-time market data product that provides full order depth using a series of order messages to track the life of customer orders in the PSX market, as well as trade data for PSX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages." Securities Exchange Act Release No. 95195 (August 21, 2023), 88 FR 58324 (August 25, 2023) (SR-Phlx-2023-37), at 58325. The difference between the two PSX TotalView feeds is the delivery mechanism: the data is the same. *Id.*

⁹ See Securities Exchange Act Release No. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR-NYSE-2015-52).

¹⁰ Through its Fixed Income and Data Services ("FIDS") (previously ICE Data Services) business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services

⁸² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSEAMER-2024-40, SR-NYSEARCA-2024-54, SR-NYSECHX-2024-24, and SR-NYSENAT-2024-20.

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative during 2024. The Exchange

will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

The Exchange proposes to add the following to the Fee Schedule to reflect fees for Connectivity to Proposed Third Party Data:

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data	Wireless connection of MIAX Pearl Equities Depth of Market Feed (DoM) data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of Nasdaq BX TotalView-ITCH FPGA data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of Nasdaq PSX TotalView data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data	Wireless connection of Nasdaq PSX TotalView-ITCH FPGA data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

Each proposed Connectivity service would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (“Single Port Third Party Data”), it would not receive an additional port for the Proposed Third Party Data, as one would not be needed.¹¹ Rather, the User would be able to connect to Proposed Third Party Data using the same port that it already had, as a User would only require one port to connect to the Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

To receive a market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content. If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or

sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Connectivity to Proposed Third Party Data was requested by Users, but the Exchange believes that it would obtain less than a handful of new customers due to the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹²

As explained below in this filing, the Exchange’s proposed Connectivity to Proposed Third Party Data would compete with the wireless connections provided by at least two third parties. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the

would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

¹¹ Similarly, if a User connected to Proposed Third Party Data on a port for which it did not pay

a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. See Securities Act Release Nos. 80215 (February 28, 2017), 82 FR 12658 (March 6, 2017) (SR–NYSE–

2017–05), and 98962 (November 16, 2023), 88 FR 81485 (November 22, 2023) (SR–NYSE–2023–44).

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."¹⁶ If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."¹⁷ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange's proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

At least two telecoms provide wireless connectivity in the MDC. A

User could use such connectivity to connect to the Proposed Third Party Data. The Exchange believes that these wireless connections are at a same or similar speed as the Exchange's proposed Connectivity, and at a similar price.¹⁸

Accordingly, the wireless connections would compete with the Exchange's proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.¹⁹ If the Exchange were to set its proposed fees too high, Users could respond by instead selecting the telecoms' substantially similar wireless connectivity.²⁰

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The Exchange's proposed service for connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the "Patch Panel Point") is normalized.²¹

Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.²² Further, all distances in the MDC are normalized. Every provider of

wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²³ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁴ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁵ Accordingly, there are real constraints on the meet-

¹⁸ Because the telecoms are not regulated entities, they are not obligated to make its latency figures or fees publicly available or the same for all entities.

¹⁹ See 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

²⁰ In addition, the Exchange believes that at least three third-party market participants, as well as FIDS, offer fiber connections to the Proposed Third Party Data in colocation. See Securities Exchange Act Release No. 82620 (February 1, 2018), 83 FR 5488 (February 7, 2018) (SR-NYSE-2018-05).

²¹ See NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

²² See *id.*

²³ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²⁴ See Securities Exchange Act Release No. 97998 (July 26, 2023), 88 FR 50238 (August 1, 2023) (SR-NYSE-2023-27) ("MMR Notice").

²⁵ See *id.* at 50241. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEARCA-2020-15, SR-NYSECHX-2020-05, SR-NYSENAT-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁷ See Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²⁶ If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for the proposed Connectivity is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes it is reasonable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. In such a case, no additional port would be needed, as the User would be able to connect to Proposed Third Party Data using the port it already had. Similarly, the Exchange believes it is reasonable

that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Exchange believes it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes it is equitable that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons.

Without this proposed rule change, Users would have fewer options for Connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Exchange believes it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes that it is not unfairly discriminatory that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or

²⁶ See Wireless Approval Order, *supra* note 16.

appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁷

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The proposed Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.²⁸ Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.²⁹ Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of

the Fee Schedule and alleviate possible customer confusion that may arise. Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.³⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level³¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.³² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the

Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³³ and Rule 19b-4(f)(6) thereunder.³⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁵

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)³⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

³³ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁶ 15 U.S.C. 78s(b)(2)(B).

²⁷ 15 U.S.C. 78f(b)(8).

²⁸ See *supra* note 21.

²⁹ See *id.*

³⁰ See *supra* note 23.

³¹ See MMR Notice, *supra* note 24.

³² See *id.* at 50241.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2024-37. 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-NYSE-2024-37 and should be submitted on or before July 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14380 Filed 6-28-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-526, OMB Control No. 3235-0584]

Proposed Collection; Comment Request; Extension: Rule 12d1-1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

An investment company ("fund") is generally limited in the amount of securities the fund ("acquiring fund") can acquire from another fund ("acquired fund"). Section 12(d) of the Investment Company Act of 1940 (the "Investment Company Act" or "Act")¹ provides that a registered fund (and companies it controls) cannot:

- acquire more than three percent of another fund's securities;
- invest more than five percent of its own assets in another fund; or
- invest more than ten percent of its own assets in other funds in the aggregate.²

In addition, a registered open-end fund, its principal underwriter, and any registered broker or dealer cannot sell that fund's shares to another fund if, as a result:

- the acquiring fund (and any companies it controls) owns more than three percent of the acquired fund's stock; or
- all acquiring funds (and companies they control) in the aggregate own more than ten percent of the acquired fund's stock.³

³⁷ 17 CFR 200.30-3(a)(12).

¹ See 15 U.S.C. 80a.

² See 15 U.S.C. 80a-12(d)(1)(A). If an acquiring fund is not registered, these limitations apply only with respect to the acquiring fund's acquisition of registered funds.

³ See 15 U.S.C. 80a-12(d)(1)(B).

Rule 12d1-1 under the Act provides an exemption from these limitations for "cash sweep" arrangements in which a fund invests all or a portion of its available cash in a money market fund rather than directly in short-term instruments.⁴ An acquiring fund relying on the exemption may not pay a sales load, distribution fee, or service fee on acquired fund shares, or if it does, the acquiring fund's investment adviser must waive a sufficient amount of its advisory fee to offset the cost of the loads or distribution fees.⁵ The acquired fund may be a fund in the same fund complex or in a different fund complex. In addition to providing an exemption from section 12(d)(1) of the Act, the rule provides exemptions from section 17(a) of the Act and rule 17d-1 thereunder, which restrict a fund's ability to enter into transactions and joint arrangements with affiliated persons.⁶ These provisions would otherwise prohibit an acquiring fund from investing in a money market fund in the same fund complex,⁷ and prohibit a fund that acquires five percent or more of the securities of a money market fund in another fund complex from making any additional investments in the money market fund.⁸

The rule also permits a registered fund to rely on the exemption to invest in an unregistered money market fund that limits its investments to those in which a registered money market fund may invest under rule 2a-7 under the Act, and undertakes to comply with all the other provisions of rule 2a-7.⁹ In addition, the acquiring fund must reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a-7, (ii) complies

⁴ See 17 CFR 270.12d1-1.

⁵ See rule 12d1-1(b)(1).

⁶ See 15 U.S.C. 80a-17(a), 15 U.S.C. 80a-17(d); 17 CFR 270.17d-1.

⁷ An affiliated person of a fund includes any person directly or indirectly controlling, controlled by, or under common control with such other person; see 15 U.S.C. 80a-2(a)(3) (definition of "affiliated person"); most funds today are organized by an investment adviser that advises or provides administrative services to other funds in the same complex; funds in a fund complex are generally under common control of an investment adviser or other person exercising a controlling influence over the management or policies of the funds; see 15 U.S.C. 80a-2(a)(9) (definition of "control"); not all advisers control funds they advise; the determination of whether a fund is under the control of its adviser, officers, or directors depends on all the relevant facts and circumstances; see Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)], at n.11; to the extent that an acquiring fund in a fund complex is under common control with a money market fund in the same complex, the funds would rely on the rule's exemptions from section 17(a) and rule 17d-1.

⁸ See 15 U.S.C. 80a-2(a)(3)(A), (B).

⁹ See 17 CFR 270.2a-7.

with sections 17(a), (d), (e), 18, and 22(e) of the Act¹⁰ as if it were a registered open-end fund, (iii) has adopted procedures designed to ensure that it complies with these statutory provisions, (iv) maintains the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii), 31a-1(b)(2)(iv), and 31a-1(b)(9);¹¹ and (v) preserves permanently, the first two years in an easily accessible place, all books and records required to be made under these rules.

Rule 2a-7 contains certain collection of information requirements. An unregistered money market fund that complies with rule 2a-7 would be subject to these collection of information requirements. In addition, the recordkeeping requirements under rule 31a-1 with which the acquiring fund reasonably believes the unregistered money market fund complies are collections of information for the unregistered money market fund. The adoption of procedures by unregistered money market funds to ensure that they comply with sections 17(a), (d), (e), 18, and 22(e) of the Act also constitute collections of

information. By allowing funds to invest in registered and unregistered money market funds, rule 12d1-1 is intended to provide funds greater options for cash management. In order for a registered fund to rely on the exemption to invest in an unregistered money market fund, the unregistered money market fund must comply with certain collection of information requirements for registered money market funds. These requirements are intended to ensure that the unregistered money market fund has established procedures for collecting the information necessary to make adequate credit reviews of securities in its portfolio, as well as other recordkeeping requirements that will assist the acquiring fund in overseeing the unregistered money market fund (and Commission staff in its examination of the unregistered money market fund's adviser).

The estimated average burden hours in this collection of information are made solely for purposes of the Paperwork Reduction Act and are not derived from a quantitative, comprehensive or even representative survey or study of the burdens associated with Commission rules and forms. The number of unregistered money market funds that are affected by rule 12d1-1 is an estimate based on the number of private liquidity funds reported on Form PF as of the third

calendar quarter 2023.¹² The hour burden estimates for the condition that an unregistered money market fund comply with rule 2a-7 are based on the burden hours included in the Commission's 2022 PRA extension regarding rule 2a-7.¹³ We use the estimated burdens for registered money market funds to extrapolate the information collection burdens for unregistered money market funds under rule 12d1-1.

Based on the estimated burden of information collection for rule 2a-7 and Form PF filings, the estimated burden of information collection for rule 12d1-1 is set forth in the table below.

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¹² See the U.S. Securities and Exchange Commission's Division of Investment Management—Analytics Office Private Funds Statistics, Third Calendar Quarter (March 31, 2024) available at <https://www.sec.gov/files/investment/2023q3-private-funds-statistics-20240331-accessible.pdf>.

¹³ See Securities and Exchange Commission, Request for OMB Approval of Extension for Approved Collection for Rule 2a-7 under the Investment Company Act of 1940 (OMB Control No. 3235-0268) (approved May 28, 2019) August 3, 2022) (the "2022 rule 2a-7 PRA extension"), available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202109-3235-024; the 2022 rule 2a-7 PRA extension is the most recent rule 2a-7 submission that includes certain estimates with respect to aggregate annual hour and cost burdens for collections of information for registered money market funds.

¹⁰ See 15 U.S.C. 80a-17(a), 15 U.S.C. 80a-17(d), 15 U.S.C. 80a-17(e), 15 U.S.C. 80a-18, 15 U.S.C. 80a-22(e).

¹¹ See 17 CFR 270.31a-1(b)(1), 17 CFR 270.31a-1(b)(2)(ii), 17 CFR 270.31a-1(b)(2)(iv), 17 CFR 270.31a-1(b)(9).

**Rule 12d1-1 information collection burden estimates
for unregistered money market funds**

	Estimated Responses	Estimated Burden Hours	Estimated Internal Cost Burden ¹⁴
Record of credit risk analyses, and determination regarding adjustable rate securities, asset backed securities, securities subject to a demand feature or guarantee, and counterparties to repurchase agreements			
	85 responses annually per 33 liquidity funds ¹⁵	680 burden hours of professional (business analyst or portfolio manager) time per liquidity fund x 33 liquidity funds 680 x 33 funds =	\$276 per hour (intermediate business analyst) + \$396 per hour (senior portfolio manager) = \$672 ÷ 2 = \$336 median weighted average per hour \$336 x 22,440 hours =
Total	2,805 estimated responses per liquidity fund annually	22,440 estimated burden hours	\$7,539,840 estimated cost burden
Fund's website disclosures including portfolio holding			

	Estimated Responses	Estimated Burden Hours	Estimated Internal Cost Burden ¹⁴
information, daily and weekly liquid assets, net shareholder flow, daily current NAV, financial support received by the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions			
	<i>Disclosure of Portfolio Holdings Information</i> 12 months x 33 liquidity funds = 396 responses per year	<i>Disclosure of Portfolio Holdings Information</i> 12 hours (one hour per monthly filing) to update the website to include the disclosure of portfolio holdings information x 33 liquidity funds = 396 hours per year + 24 hours of webmaster time for an estimated 1 new liquidity fund¹⁶ each year to initially develop a webpage and provide monthly disclosure for the initial year = 24 one-time burden hours = 420 aggregate annual one-time and recurring burden hours for the disclosure of portfolio holdings	<i>Disclosure of Portfolio Holdings Information</i> 396 hours (for 33 liquidity funds) x \$299 (per hour for a webmaster) = \$118,404 (for recurring internal burden labor costs) + 24 hours for 1 new liquidity fund x \$299 (per hour for a webmaster) = \$7,176 = \$125,580 total aggregate annual one-time and recurring labor burdens for disclosure of portfolio holdings
	<i>Disclosure of Daily and Weekly Liquid Assets and Net Shareholder Flow</i> 252 business days x 33 liquidity funds = 8,316 responses per year	<i>Disclosure of Daily and Weekly Liquid Assets and Net Shareholder Flow</i> 36 hours ongoing annual burden x 33 liquidity funds = 1,188 hours per year + 70 hours for each new liquidity fund x 1 new fund = 70 one-time hours	<i>Disclosure of Daily and Weekly Liquid Assets and Net Shareholder Flow</i> [31.5 hours x \$371 (blended rate for a senior systems analyst (\$342) and senior programmer (\$399) = \$11,687 (per liquidity fund)] +

	Estimated Responses	Estimated Burden Hours	Estimated Internal Cost Burden ¹⁴
		=	
		1,258 aggregate annual recurring and one-time burden hours for disclosure of daily and weekly liquid assets and shareholder flow	[4.5 hours x \$406 (blended rate for compliance manager (\$372) and a compliance attorney (\$440)) = \$1,827] = \$13,514 (per fund to update the depiction of daily and weekly liquid assets and the liquidity fund's net inflow or outflow on the liquidity fund's website each business day during that year) x 33 liquidity funds = \$445,962 recurring aggregate annual cost burdens for the disclosure of daily and weekly liquid assets and weekly liquid assets and the fund's net inflow or outflow on the liquidity fund's website each business day during the year + [(20 hours x \$406 (blended rate for compliance manager (\$372) and a compliance attorney (\$440)) = \$8,120 + 50 hours x \$371 (blended rate for a senior systems analyst (\$342) and senior programmer (\$399)) = \$18,550)] = \$26,670 (internal labor cost burden for each new fund)] = \$472,632 aggregate annual recurring and one-time cost burdens for disclosure of daily and weekly liquid assets and shareholder flow
	<i>Disclosure of Daily Current NAV</i>	<i>Disclosure of Daily Current NAV</i>	<i>Disclosure of Daily Current NAV</i>
	252 business days x 33 liquidity funds = 8,316 responses per year	[32 hours (sr. systems analyst/sr. programmer) x 33 liquidity funds = 1,056 hours per year] + [70 one-time burden hours for each new liquidity fund	32 hours x \$371 (blended rate for a senior systems analyst (\$342) and senior programmer (\$399)) = \$11,872 (annual ongoing internal labor cost burden

	Estimated Responses	Estimated Burden Hours	Estimated Internal Cost Burden ¹⁴
		x 1 new liquidity fund = 70 one-time burden hours] = 1,126 aggregate annual recurring and one-time burden hours for disclosure of daily current NAV	per fund) x 33 funds = \$391,776 ongoing annual cost burdens + [(20 hours x \$406 (blended rate for compliance manager (\$372) and a compliance attorney (\$440)) = \$8,120 + (50 hours x \$371 (blended rate for a senior systems analyst (\$342) and senior programmer (\$399) = \$18,550)] = \$26,670 (internal labor cost burden for each new fund)] x 1 new fund = \$26,670 (total one-time cost burden) = \$418,446 aggregate annual recurring and one- time cost burdens
	<i>Disclosure of Financial Support Received by the Fund, and Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions</i> Not applicable	<i>Disclosure of Financial Support Received by the Fund, and Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions</i> Not applicable	<i>Disclosure of Financial Support Received by the Fund, and Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions</i> Not applicable
	<i>Total Estimated Burden Hours Relating to Website Disclosure</i> 396 + 8,316 + 8,316 =	<i>Total Estimated Burden Hours Relating to Website Disclosure</i> 420 + 1,258 + 1,126 =	<i>Total Estimated Burden Hours Relating to Website Disclosure</i> \$125,580 + \$472,632 + \$418,446 =
TOTAL	16,928 estimated responses	2,804 estimated burden hours	\$1,016,658 estimated cost burden
Board review of procedures and guidelines of any investment adviser or officers to whom the fund's board has delegated responsibility under rule 2a-7 and amendment of such			

	Estimated Responses	Estimated Burden Hours	Estimated Internal Cost Burden ¹⁴
procedures and guidelines¹⁷			
	1 response annually for each of 8 funds ¹⁸	1 hour (board time) + 4 hours (compliance and professional legal time) = 5 hours	1 hour x \$5,672 (board time) = \$5,672 + 4 x \$406 (blended rate for compliance manager (\$372) and a compliance attorney (\$440)) = \$1,624 = \$7,296 (cost per fund)
		5 hours x 8 responses =	\$7,296 x 8 responses =
TOTAL	8 estimated responses	40 estimated burden hours	\$58,368 estimated cost burden
Review, revise, and approve written procedures to stress test a fund's portfolio			
	1 response annually for each of 33 fund complexes ¹⁹	1 hour of board time + 5 hours of senior portfolio manager time + 3 hours of risk management specialist time + 3 hours of professional legal time = 12 hours	1 hour x \$5,672 (board time) = \$5,672 5 x \$396 (Sr. portfolio manager) = \$1,980 3 x \$240 (risk management specialist) = \$720 3 x \$500 (attorney) = \$1,500 \$5,672 + \$1,980 + \$720 + \$1,500 = \$9,872 per liquidity fund complex
		12 hours x 33 responses =	\$9,872 x 33 responses =
TOTAL	33 estimated responses	396 estimated burden hours	\$325,776 estimated cost burden

	Estimated Responses	Estimated Burden Hours	Estimated Internal Cost Burden ¹⁴
Reports to fund boards on the results of stress testing²⁰			
	5 responses annually for each of 33 fund complexes	5 hours senior portfolio manager time + 2 hours compliance manager time + 2 hours professional legal time + 1 hour paralegal time = 10 hours per response	5 x \$396 (sr. portfolio manager) = \$1,980 2 x \$372 (compliance manager) = \$744 2 x \$500 (attorney) = \$1,000 1 x \$262 (paralegal) = \$262 \$1,980 + \$744 + \$1,000 + \$262 = \$3,986 per response \$3,986 x 165 responses =
	5 responses x 33 fund complexes =	10 hours x 165 responses =	
TOTAL	165 estimated responses	1,650 estimated burden hours	\$657,690 estimated cost burden
Retail Funds Policies and Procedures²¹			
TOTAL	Not applicable	Not applicable	Not applicable
Establishment of written procedures to test periodically the ability of the fund to maintain a stable NAV per share based on certain hypothetical events ("stress testing")			
	1 response annually for 1 new liquidity fund	3 hours board time + 8 hours professional legal time + 7 hours risk management specialist time + 4 hours senior risk management time = 22 hours	3 hours x \$5,672 (board time) = \$17,016 8 hours x \$500 (attorney) = \$4,000 7 hours x \$240 (risk management specialist) = \$1,680 4 hours x \$430 (sr. risk management specialist) = \$1,720

	Estimated Responses	Estimated Burden Hours	Estimated Internal Cost Burden ¹⁴
		22 hours x 1 response =	\$17,016 + \$4,000 + \$1,680 + \$1,720 = \$24,416 (per response) \$24,416 x 1 response =
TOTAL	1 estimated response	22 estimated burden hours	\$24,416 estimated cost burden
Establishment of written procedures designed to stabilize NAV and guidelines and procedures for board delegation of authority²²			
	1 response annually for 1 new liquidity fund	0.5 hours board time + 7.2 hours professional legal time + 7.8 hours paralegal time = 15.5 hours 15.5 hours x 1 response	0.5 hours x \$5,672 (board time) = \$2,836 7.2 hours x \$500 (attorney) = \$3,600 7.8 hours x \$262 (paralegal) = \$2,044 \$2,836 + \$3,600 + \$2,044 = \$8,480 (per response) \$8,480 x 1 response =
TOTAL	1 estimated response	15.5 estimated burden hours	\$8,480 estimated cost burden
Board determination – Fees and Gates²³			
	2 liquidity funds per year	4 hours attorney + 2 hours of board time + 1 hours of fund's compliance attorney = 7 hours per liquidity fund 7 hours x 2 funds =	4 hours x \$500 (attorney) = \$2,000 2 hours x \$5,672 (board time) = \$11,344 1 x \$440 (compliance attorney) = \$440 \$2,000 + \$11,344 + \$440 = \$13,784 per liquidity fund \$13,784 x 2 funds =
TOTAL	2 estimated responses	14 estimated hours burden	\$27,568 estimated costs burden
Written record of board determinations and			

	Estimated Responses	Estimated Burden Hours	Estimated Internal Cost Burden ¹⁴
actions related to failure of a security to meet certain eligibility standards or an event of default or insolvency²⁴			
	2 responses annually for 2 liquidity funds ²⁵	.5 hours (professional legal time)	.5 hours x \$500 (attorney) = \$250
		.5 hours x 4 responses	\$250 x 4 responses =
Total	4 estimated responses	2 estimated burden hours	\$1,000 estimated cost burden
TOTAL ESTIMATED BURDEN OF INFORMATION COLLECTION FOR RULE 12d1-1	19,947 estimated responses annually	27,384 estimated burden hours annually	\$9,659,796 estimated cost burden annually

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Commission staff estimates that in addition to the internal costs described

¹⁴ The cost burdens shown in this chart for professional personnel are based on SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, modified for 2024 by the Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead and the cost burdens for clerical personnel are based on SIFMA's *Office Salaries in the Securities Industry 2013*, modified for 2024 by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead; however, SIFMA data does not include a board of directors; for board time, Commission staff currently uses a cost of \$5,672 per hour, which was last adjusted for inflation in December 2024; this estimate assumes an average of nine board members per year.

¹⁵ The number of liquidity funds is based on the following: $68 \times$ the percentage of liquidity funds that are at least partially in compliance with the risk-limiting provisions of rule 2a-7, or $100 - 52 = 48\%$; the result (rounded up to a whole number) is 33 liquidity funds ($68 \times 0.48 = 33$); the number of liquidity funds and percentage of funds that are at least partially compliant with the risk-limiting provisions of rule 2a-7 is based on the U.S. Securities and Exchange Commission's Division of Investment Management—Analytics Office Private Funds Statistics, Third Calendar Quarter 2023 (March 31, 2024) available at <https://www.sec.gov/files/investment/2023q3-private-funds-statistics-20240331-accessible.pdf>.

¹⁶ The number of new unregistered money market funds is estimated from 2021–2023 historical Form PF filings by liquidity fund advisers; see Securities and Exchange Commission's Division of Investment Management—Analytics Office Private Funds Statistics, Third Calendar Quarter 2023 (March 31, 2024) available at <https://www.sec.gov/files/investment/2023q3-private-funds-statistics-20240331-accessible.pdf>.

¹⁷ We recognize that in many cases the adviser to an unregistered money market fund typically performs the function of the fund's board; *Money Market Fund Reform; Amendments to Form PF* Investment Company Act Rel. No. 31166 (Jul. 23, 2014), 79 FR 47735, 47809 (Aug. 14, 2014).

in the table above, unregistered money market funds also will incur external costs to preserve records, as required under rule 2a-7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records. In the 2022 rule 2a-7 PRA extension, Commission staff estimated that the amount an individual money market fund may spend ranges from \$100 per year to \$300,000. We have no reason to believe the range is different for unregistered money market

¹⁸ For purposes of this PRA extension, we assumed that on average 25% (33 funds $\times$.25 = approximately 8 funds) of liquidity funds would review and update their procedures on annual basis.

¹⁹ This number has been derived from the number of advisers to liquidity funds; see U.S. Securities and Exchange Commission, Division of Investment Management, Analytics Office, Private Fund Statistics, Third Quarter 2023 (March 31, 2024), Table 2.

²⁰ See *supra* note 25.

²¹ There are no liquidity funds of this type; liquidity funds only are offered to qualified investors.

²² See *supra* note 25.

²³ *Id.*

²⁴ *Id.*

²⁵ In the context of registered money market funds, we have previously estimated an average of approximately 2 occurrences for 20 funds each year; however, this number may vary significantly in any particular year; for purposes of this PRA extension, we assumed there would be same proportion of unregistered money market funds experiencing events of default or solvency each year. (20/320 registered money market funds = approximately 5%. $5\% \times 33$ liquidity funds = approximately 2 liquidity funds).

funds. Based on Form PF data as of the third calendar quarter 2023, liquidity funds have \$361 billion in gross asset value.²⁶ The Commission does not have specific information about the proportion of assets held in small, medium-sized, or large unregistered money market funds. Because liquidity funds are often used as cash management vehicles, the staff estimates that each private liquidity fund is a "large" fund (*i.e.*, more than \$1 billion in assets under management). Based on a cost of \$0.0000009 per dollar of assets under management (for large funds),²⁷ the staff estimates compliance with the record storage requirements of rule 2a-7 for these unregistered money market funds costs approximately \$324,900 annually.²⁸

Consistent with estimates made in the rule 2a-7 submission, Commission staff estimates that unregistered money market funds also incur capital costs to create computer programs for maintaining and preserving compliance records for rule 2a-7 of \$0.0000132 per dollar of assets under management. Based on the assets under management figures described above, staff estimates

²⁶ See U.S. Securities and Exchange Commission, Division of Investment Management, Analytics Office, Private Fund Statistics, Fourth Quarter 2019 (Oct. 2, 2020), Table 3.

²⁷ The recordkeeping cost estimates are \$0.0051295 per dollar of assets under management for small funds, and \$0.0005041 per dollar of assets under management for medium-sized funds; the cost estimates are the same as those used in the most recently approved rule 2a-7 submission.

²⁸ This estimate is based on the following calculation: ($\$294 \text{ billion} \times \$0.0000009$) = \$264,600 for large funds.

annual capital costs for all unregistered money market funds of \$4.76 million.²⁹

Commission staff further estimates that, even absent the requirements of rule 2a–7, money market funds would spend at least half of the amounts described above for record preservation (\$162,450) and for capital costs (\$2.38 million). Commission staff concludes that the aggregate annual external costs of compliance with the rule are \$162,450 for record preservation and \$2.38 million for capital costs, or a total of \$2.54 million.

The collections of information required for unregistered money market funds by rule 12d1–1 are necessary in order for acquiring funds to be able to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 by August 30, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: June 26, 2024.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–14441 Filed 6–28–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100423; File No. SR–NYSEARCA–2024–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

June 25, 2024.

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 June 12, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to additional market data feeds. 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 Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users ⁴ with wireless connectivity to additional market data feeds.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”), and wired connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections (“Connectivity”) to four additional market data feeds (together, the “Proposed Third Party Data”):

- MIAx Pearl Equities Depth of Market Feed (“MIAx DoM”),⁶
- Nasdaq BX TotalView-ITCH FPGA,⁷
- Nasdaq PSX TotalView, and
- Nasdaq PSX TotalView-ITCH FPGA.⁸

⁴ For purposes of the Exchange's colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEARCA–2015–82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR–NYSE–2024–37, SR–NYSEAMER–2024–40, SR–NYSECHX–2024–24, and SR–NYSENAT–2024–20.

⁵ See Securities Exchange Act Release No. 99808 (March 20, 2024), 89 FR 21151 (March 26, 2024) (SR NYSEARCA–2024–26).

⁶ As described by MIAx PEARL, LCC, “[t]he [MIAx] DoM feed is a data feed that contains the displayed price and size of each order entered on MIAx PEARL Equities, as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages.” Securities Exchange Act Release No. 91073 (February 5, 2021), 86 FR 9096, 9100 (February 11, 2021) (SR–PEARL–2021–02).

⁷ The difference between the Nasdaq BX TotalView feed and the Nasdaq BX TotalView-ITCH feed, which is part of the Existing Third Party Data, is the delivery mechanism: the data is the same. As described by Nasdaq BX, Inc., “BX TotalView is a real-time market data product that provides full order depth using a series of order messages to track the life of customer orders in the BX market, as well as trade data for BX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages.” Securities Exchange Act Release No. 98158 (August 17, 2023), 88 FR 57505 (August 23, 2023) (SR–BX–2023–020), at 57506.

⁸ According to Nasdaq PHLX LLC, “PSX TotalView is a real-time market data product that provides full order depth using a series of order

Continued

²⁹ This estimate is based on the following calculation: (\$294 billion × 0.0000132) = \$3.88 million.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

As with most other Existing Third Party Data,⁹ the monthly charge for Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is

applicable to Connectivity to the Proposed Third Party Data.

Users would be offered Connectivity to Proposed Third Party Data through connections into the colocation center in the Mahwah, New Jersey data center ("MDC").¹⁰

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become

operative during 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

The Exchange proposes to add the following to the Fee Schedule to reflect fees for Connectivity to Proposed Third Party Data:

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data.	Wireless connection of MIAx Pearl Equities Depth of Market Feed (DoM) data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq BX TotalView-ITCH FPGA data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq PSX TotalView data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq PSX TotalView-ITCH FPGA data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

Each proposed Connectivity service would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data ("Single Port Third Party Data"), it would not receive an additional port for the Proposed Third Party Data, as one would not be needed.¹¹ Rather, the User would be able to connect to Proposed Third Party Data using the same port that it already had, as a User would only require one port to connect to the Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

To receive a market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content. If a User were to purchase more than one wireless connection to

Proposed Third Party Data, it would pay more than one non-recurring initial charge.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Connectivity to Proposed Third Party Data was requested by Users, but the Exchange believes that it would obtain less than a handful of new customers due to the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their

operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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."¹²

As explained below in this filing, the Exchange's proposed Connectivity to Proposed Third Party Data would compete with the wireless connections provided by at least two third parties. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of

messages to track the life of customer orders in the PSX market, as well as trade data for PSX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages." Securities Exchange Act Release No. 95195 (August 21, 2023), 88 FR 58324 (August 25, 2023) (SR-Phlx-2023-37), at 58325. The difference between the two PSX TotalView feeds is the delivery mechanism: the data is the same. *Id.*

⁹ See Securities Exchange Act Release No. 76749 (December 23, 2015), 80 FR 81640 (December 30, 2015) (SR-NYSEArca-2015-99).

¹⁰ Through its Fixed Income and Data Services ("FIDS") (previously ICE Data Services) business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

¹¹ Similarly, if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port

Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. See Securities Exchange Act Release Nos. 80116 (February 28, 2017), 82 FR 12663 (March 6, 2017) (SR-NYSEArca-2017-18), and 98964 (November 16, 2023), 88 FR 81449 (November 22, 2023) (SR-NYSEArca-2023-79).

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."¹⁶ If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or

the rules thereunder."¹⁷ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange's proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

At least two telecoms provide wireless connectivity in the MDC. A User could use such connectivity to connect to the Proposed Third Party Data. The Exchange believes that these wireless connections are at a same or similar speed as the Exchange's proposed Connectivity, and at a similar price.¹⁸

Accordingly, the wireless connections would compete with the Exchange's proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.¹⁹ If the Exchange were to set its proposed fees too high, Users could respond by instead selecting the telecoms' substantially similar wireless connectivity.²⁰

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The Exchange's proposed service for connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More

specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the "Patch Panel Point") is normalized.²¹

Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.²² Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²³ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁴ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEARCA-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁷ See Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

¹⁸ Because the telecoms are not regulated entities, they are not obligated to make its latency figures or fees publicly available or the same for all entities.

¹⁹ See 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

²⁰ In addition, the Exchange believes that at least three third-party market participants, as well as FIDS, offer fiber connections to the Proposed Third Party Data in colocation. See Securities Exchange Act Release No. 82617 (February 1, 2018), 83 FR 5500 (February 7, 2018) (SR-NYSEARCA-2018-06).

²¹ See NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

²² See *id.*

²³ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²⁴ See Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR-NYSEARCA-2023-47) ("MMR Notice").

such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁵ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²⁶ If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the

competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for the proposed Connectivity is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes it is reasonable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. In such a case, no additional port would be needed, as the User would be able to connect to Proposed Third Party Data using the port it already had. Similarly, the Exchange believes it is reasonable that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated

because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Exchange believes it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes it is equitable that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons.

Without this proposed rule change, Users would have fewer options for Connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be

²⁵ See *id.* at 50246. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

²⁶ See Wireless Approval Order, *supra* note 16.

charged the same amount for the same services.

The Exchange believes it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes that it is not unfairly discriminatory that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁷

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The proposed Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds

of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.²⁸ Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.²⁹ Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise. Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.³⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level³¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In

this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.³² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³³ and Rule 19b-4(f)(6) thereunder.³⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁵

³² See *id.* at 50246.

³³ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to

²⁷ 15 U.S.C. 78f(b)(8).

²⁸ See *supra* note 21.

²⁹ See *id.*

³⁰ See *supra* note 23.

³¹ See MMR Notice, *supra* note 24.

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) ³⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEARCA-2024-54. 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

give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁶ 15 U.S.C. 78s(b)(2)(B).

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-54 and should be submitted on or before July 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14382 Filed 6-28-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-050, OMB Control No. 3235-0060]

Proposed Collection; Comment Request; Extension: Exchange Act Form 8-K

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 8-K (17 CFR 249.308) is filed by issuers to satisfy their current reporting obligations pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o(d)) in connection with the occurrence of significant corporate events. The purpose of Form 8-K is to provide investors with prompt disclosure of material information so that investors will be able to make investment and voting decisions better informed and receive information more-timely. We estimate that Form 8-K takes 8.414583

³⁷ 17 CFR 200.30-3(a)(12).

hours per response and is filed by 70,560 responses annually. We estimate that 75% of the 8.414583 hours per response (6.31094 hours) is prepared by the issuer for a total annual reporting burden of 445,300 hours (6.31094 hours per response × 70,560 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication by August 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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: June 25, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14392 Filed 6-28-24; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100424; File No. SR-NYSECHX-2024-24]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

June 25, 2024.

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 June 12, 2024, the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 amend the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to additional market data feeds. 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 Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to additional market data feeds.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”), and wired connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections (“Connectivity”) to four additional market data feeds (together, the “Proposed Third Party Data”):

- MIAX Pearl Equities Depth of Market Feed (“MIAX DoM”),⁶

- Nasdaq BX TotalView-ITCH FPGA,⁷
- Nasdaq PSX TotalView, and
- Nasdaq PSX TotalView-ITCH FPGA.⁸

As with most other Existing Third Party Data,⁹ the monthly charge for Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is applicable to Connectivity to the Proposed Third Party Data.

Users would be offered Connectivity to Proposed Third Party Data through connections into the colocation center in the Mahwah, New Jersey data center (“MDC”).¹⁰

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative during 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

The Exchange proposes to add the following to the Fee Schedule to reflect fees for Connectivity to Proposed Third Party Data:

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data.	Wireless connection of MIAX Pearl Equities Depth of Market Feed (DoM) data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq BX TotalView-ITCH FPGA data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq PSX TotalView data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR-NYSECHX-2019-12). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange’s affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-37, SR-NYSEAMER-2024-40, SR-NYSEARCA-2024-54, and SR-NYSENAT-2024-20.

⁵ See Securities Exchange Act Release No. 99809 (March 20, 2024), 89 FR 21158 (March 26, 2024) (SR-NYSECHX-2024-11).

⁶ As described by MIAX PEARL, LCC, “[t]he [MIAX] DoM feed is a data feed that contains the displayed price and size of each order entered on MIAX PEARL Equities, as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages.” Securities Exchange Act Release No. 91073 (February 5, 2021), 86 FR 9096, 9100 (February 11, 2021) (SR-PEARL-2021-02).

⁷ The difference between the Nasdaq BX TotalView feed and the Nasdaq BX TotalView-ITCH feed, which is part of the Existing Third Party Data, is the delivery mechanism: the data is the same. As described by Nasdaq BX, Inc., “BX TotalView is a real-time market data product that provides full order depth using a series of order messages to track the life of customer orders in the BX market, as well as trade data for BX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages.” Securities Exchange Act Release No. 98158 (August 17, 2023), 88 FR 57505 (August 23, 2023) (SR-BX-2023-020), at 57506.

⁸ According to Nasdaq PHLX LLC, “PSX TotalView is a real-time market data product that provides full order depth using a series of order messages to track the life of customer orders in the PSX market, as well as trade data for PSX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages.” Securities Exchange Act Release No. 95195 (August 21, 2023), 88 FR 58324 (August 25, 2023) (SR-Phlx-2023-37), at 58325. The difference between the two PSX TotalView feeds is the delivery mechanism: the data is the same. *Id.*

⁹ See 84 FR 58778, *supra* note 4, at 58784–85.

¹⁰ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq TotalView-ITCH FPGA PSX data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

Each proposed Connectivity service would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (“Single Port Third Party Data”), it would not receive an additional port for the Proposed Third Party Data, as one would not be needed.¹¹ Rather, the User would be able to connect to Proposed Third Party Data using the same port that it already had, as a User would only require one port to connect to the Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

To receive a market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content. If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Connectivity to Proposed Third Party Data was requested by Users, but the Exchange believes that it would obtain less than a handful of new customers due to the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a

means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹²

As explained below in this filing, the Exchange’s proposed Connectivity to Proposed Third Party Data would compete with the wireless connections provided by at least two third parties. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The

Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission’s market-based test considers “whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.”¹⁶ If the Exchange meets that burden, “the Commission will find that its proposal is consistent with the Act unless ‘there is a substantial countervailing basis to find that the terms’ of the proposal violate the Act or the rules thereunder.”¹⁷ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange’s proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEARCA–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEARCA–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (“Wireless Approval Order”), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁷ See Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

¹¹ Similarly, if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. See 84 FR 58778, *supra* note 4, at 58784–85, and Securities Act Release No. 98965 (November 16, 2023), 88 FR 81490 (November 22, 2023) (SR–NYSECHX–2023–22).

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

connectivity to the Proposed Third Party Data.

At least two telecoms provide wireless connectivity in the MDC. A User could use such connectivity to connect to the Proposed Third Party Data. The Exchange believes that these wireless connections are at a same or similar speed as the Exchange's proposed Connectivity, and at a similar price.¹⁸

Accordingly, the wireless connections would compete with the Exchange's proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.¹⁹ If the Exchange were to set its proposed fees too high, Users could respond by instead selecting the telecoms' substantially similar wireless connectivity.²⁰

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The Exchange's proposed service for connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the "Patch Panel Point") is normalized.²¹

Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the

same.²² Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²³ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁴ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁵ Accordingly,

there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²⁶ If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for the proposed Connectivity is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes it is reasonable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. In such a case, no additional port would be needed, as the User would be able to

¹⁸ Because the telecoms are not regulated entities, they are not obligated to make its latency figures or fees publicly available or the same for all entities.

¹⁹ See 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

²⁰ In addition, the Exchange believes that at least three third-party market participants, as well as FIDS, offer fiber connections to the Proposed Third Party Data in colocation. See 84 FR 58778, *supra* note 4, at 58788.

²¹ See NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

²² See *id.*

²³ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²⁴ See Securities Exchange Act Release No. 98001 (July 26, 2023), 88 FR 50196 (August 1, 2023) (SR-NYSECHX-2023-14) ("MMR Notice").

²⁵ See *id.* at 50199. Importantly, the Exchange is prevented from making any alteration to its meet-

me-room services or fees without filing a proposal for such changes with the Commission.

²⁶ See Wireless Approval Order, *supra* note 16.

connect to Proposed Third Party Data using the port it already had. Similarly, the Exchange believes it is reasonable that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Exchange believes it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes it is equitable that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third

Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons.

Without this proposed rule change, Users would have fewer options for Connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Exchange believes it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes that it is not unfairly discriminatory that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁷

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The proposed Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.²⁸ Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.²⁹ Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly

²⁷ 15 U.S.C. 78f(b)(8).

²⁸ See *supra* note 21.

²⁹ See *id.*

charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise. Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.³⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level³¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.³² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed

Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³³ and Rule 19b-4(f)(6) thereunder.³⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁵

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)³⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

³³ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁶ 15 U.S.C. 78s(b)(2)(B).

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-NYSECHX-2024-24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSECHX-2024-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the 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-NYSECHX-2024-24 and should be submitted on or before July 22, 2024.

³⁰ See *supra* note 23.

³¹ See MMR Notice, *supra* note 23.

³² See *id.* at 50199.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷
Vanessa A. Countryman,
Secretary.
[FR Doc. 2024–14383 Filed 6–28–24; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION
[SEC File No. 270–xxx, OMB Control No. 3235–0784]

Proposed Collection; Comment Request; Extension: Rule 206(4)–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the “Commission” or “SEC”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 206(4)–1 under the Investment Advisers Act of 1940 (“Advisers Act”), known as the “marketing rule,” addresses advisers marketing their services to clients and investors.¹ Specifically, the marketing rule states that, as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act, it is unlawful for any investment adviser registered or required to be registered under section 203 of the of the Advisers Act, directly or indirectly, to disseminate any advertisement that violates any of paragraphs (a) through (d) of the rule, which include the rule’s general

prohibitions, as well as conditions applicable to an adviser’s use of testimonials, endorsements, third-party ratings, and performance information.

Each requirement under the marketing rule that an adviser disclose information, offer to provide information, or adopt policies and procedures constitutes a “collection of information” requirement under the Paperwork Reduction Act of 1995 (“PRA”). The respondents to these collections of information requirements will be investment advisers that are registered or required to be registered with the Commission. As of September 2023, there were 15,555 investment advisers registered with the Commission. Investment adviser marketing is not mandatory. However, marketing is an essential part of retaining and attracting clients and may be conducted easily through the internet and social media. Accordingly, we estimate that all investment advisers will disseminate at least one communication that meets the rule’s definition of “advertisement” and therefore be subject to the requirements of the marketing rule.

Because the use of testimonials, endorsements, third-party ratings, and performance results in advertisements is voluntary, the percentage of investment advisers that would include these items in an advertisement is uncertain. However, we have made certain estimates of this data, as discussed below, solely for the purpose of this PRA analysis.

The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about an adviser’s marketing practices. We use the information to support and manage our regulatory, examination, and enforcement programs. Clients use this information to determine whether to hire an adviser.

This collection of information is found at 17 CFR.206(4)–1 and it is mandatory. The information collected takes the form of records retained by respondents and disclosures to respondents’ clients, potential clients, and the Commission.

General Prohibitions

The general prohibitions under the rule do not create a collection of information and are, therefore, not discussed, with one exception. The rule prohibits advertisements that include a material statement of fact that the adviser does not have a reasonable basis for believing that it will be able to substantiate upon demand by the Commission. Advisers would be able to demonstrate this reasonable belief in a number of ways.² For example, they could make a record contemporaneous with the advertisement demonstrating the basis for their belief. An adviser might also choose to implement policies and procedures to address how this requirement is met. This will create a collection of information burden within the meaning of the PRA.

As stated above, we estimate that all investment advisers will disseminate at least one communication that meets the rule’s definition of “advertisement” and therefore be subject to the requirements of the marketing rule. We also estimate that such advertisements will include at least one statement of material fact that will be subject to this general prohibition, for which an adviser will create and/or maintain a record documenting its reasonable belief that it can substantiate the statement. This estimate reflects that many types of statements typically included in an advertisement (*e.g.* performance) can likely be substantiated by other records that an adviser will be required to create and maintain under the rule.³ Table 1 summarizes the PRA estimates for the internal and external burdens associated with this requirement.

TABLE 1—GENERAL PROHIBITIONS

	Internal hour burden		Wage rate ¹	Internal time costs	Annual external cost burden
Estimates for Rule 204–1 for General Prohibitions					
Determine whether statements in an advertisement are material facts.	0.5	×	\$372 (compliance manager)	\$186	.....
	0.5	×	\$440 (compliance attorney)	\$220	.....

³⁷ 17 CFR 200.30–3(a)(12).
¹ See 17 CFR 206(4)–1; Investment Adviser Marketing, Release No. IA–5653 (Dec. 22, 2020) [86 FR 13024 (Mar. 5, 2021)] (the “Adopting Release”); the Commission adopted amendments to Rule 206(4)–1 in 2020 that amended existing rule 206(4)–1 (the “advertising rule”), which was adopted in

1961 to target advertising practices that the Commission believed were likely to be misleading, and replaced rule 206(4)–3 (the “solicitation rule”), which was adopted in 1979 to help ensure clients are aware that paid solicitors who refer them to advisers have a conflict of interest; see Adopting Release; see also 17 CFR 275.206(4)–1; Advertisements by Investment Advisers, Release

No. IA–121 (Nov. 1, 1961) [26 FR 10548 (Nov. 9, 1961)]; Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Release No. 688 (July 12, 1979) [44 FR 42126 (Jul 18, 1979)].
² See Adopting Release, *supra* footnote 1, at section II.B.2.
³ See *id.*

TABLE 1—GENERAL PROHIBITIONS—Continued

	Internal hour burden		Wage rate ¹	Internal time costs	Annual external cost burden
Creation and maintenance of records substantiating material facts in any advertisements.	4 1	× ×	\$75 (general clerk) \$84 (compliance clerk)	\$300 \$84	.....
Total burden per adviser	6	.....	.....	\$790	.....
Total number of affected advisers	× 15,555	.....	.....	× 15,555	.....
Total burden for general prohibitions	93,330 hours	.....	.....	\$12,288,450	.....

Notes:¹ See SIFMA Report, *infra* footnote 8.*Testimonials and Endorsements in Advertisements*

Under the marketing rule, investment advisers are prohibited from including in any advertisement, or providing any compensation for, any testimonial or endorsement unless the adviser discloses, or the investment adviser reasonably believes that the person giving the testimonial or endorsement discloses: (i) clearly and prominently: (A) that the testimonial was given by a current client or investor, or the endorsement was given by a person other than a current client or investor; (B) that cash or non-cash compensation was provided for the testimonial or endorsement, if applicable; and (C) a brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person; (ii) the material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement; and (iii) a description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.⁴ The rule also imposes an oversight obligation that requires that an investment adviser have a reasonable basis to believe that the testimonial or endorsement complies with the marketing rule and have a written agreement with the person giving a testimonial or endorsement (except for certain affiliated persons of the adviser) that describes the scope of the agreed upon activities and the terms of the compensation for those activities when making payments for compensated testimonials and endorsements that are above the *de minimis* threshold.⁵ This collection of information consists of two components: (i) the requirement to

disclose certain information in connection with the testimonial and endorsement, and (ii) the requirement to oversee the testimonial or endorsement, including a written agreement with certain persons giving the testimonial or endorsement.

The marketing rule's definitions of testimonials and endorsements generally contain three elements: (i) statements about the client's/non-client's or investor's experience with the investment adviser or its supervised persons, (ii) statements that directly or indirectly solicit any prospective client or investor in a private fund for the investment adviser, or (iii) statements that refer any prospective client or investor in a private fund to the investment adviser.

We previously estimated that 50 percent of advisers will use a testimonial or endorsement in their advertisements.⁶ However, we are reducing this estimate to 21 percent in light of amendments to Form ADV that became effective in 2021 that require advisers to provide additional information regarding their marketing practices.⁷ We continue to estimate that each adviser will use an average of five promoters and use 35 testimonials or endorsements annually, which includes testimonials and endorsements incorporated into an adviser's own advertisement and those communicated by promoters directly.

Under the marketing rule, an adviser that uses a testimonial or endorsement will be required to disclose certain information at the time it is disseminated. We estimate this burden at 0.20 hours per disclosure and believe that advisers will incur this same

burden each year, since each testimonial and/or endorsement used will likely be different and thus require updated disclosures. An investment adviser's in-house compliance managers and compliance attorneys will likely prepare disclosures, which will likely be included in the advertisement.⁸

Some of these third-party testimonials and endorsements will require delivery; thus, we estimate that 20 percent of the disclosures would be delivered by the U.S. Postal Service, with the remaining 80 percent delivered electronically or as part of another delivery of documents. For the 20% of advisers that will use physical mail, we estimate that the average annual costs associated with printing and mailing this information will be collectively \$592 for all disclosure documents associated with a single registered investment adviser.⁹

We estimate the average burden hours each year per adviser to oversee testimonials and endorsements will be one hour for each promoter, or five hours in total for each adviser that is subject to this collection of

⁸ We estimate the hourly wage rate for compliance manager is \$372 and a compliance attorney is \$440; the hourly wages used are from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* ("SIFMA Report"), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

⁹ We do not have specific data regarding how the cost of printing and mailing the underlying information would differ, nor are we able to specifically identify how the cost of printing and mailing the underlying information might be affected by the rule; for these reasons, we estimate \$592 per year to collectively print and mail, upon request, the underlying information associated with hypothetical performance for purposes of our analysis; we previously estimated this cost at \$500 and are adjusting to account for inflation between December of 2020 and January of 2024; see Adopting Release, *supra* footnote 1, at section IV.B; U.S. Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm; in addition, investors may also request to receive the underlying information electronically; we estimate that there would be negligible external costs associated with emailing electronic copies of the underlying information.

⁴ Rule 206(4)–1(b)(1).

⁵ Rule 206(4)–1(b)(2).

⁶ See Adopting Release, *supra* footnote 1, at section IV.B.

⁷ See Form ADV, Item 5.L (requiring an adviser to state, among other things, whether any of its advertisements include performance results, testimonials, endorsements, or third-party ratings). Specifically, 3,231 advisers indicated that they use either testimonials or endorsements in response to Item 5.L. 3,231 advisers/15,555 total advisers registered as of September 2023 = approximately 21%; see also Adopting Release, *supra* footnote 1, at section II.H.

information.¹⁰ While the rule provides flexibility as to how advisers conduct this oversight, we generally believe that this burden will include contacting solicited clients, pre-reviewing testimonials or endorsements, or other similar methods. Additionally, we estimate that each adviser will incur an average burden hour of one hour for

each promoter, or five hours in total, to prepare the required written agreements. In-house compliance managers and compliance attorneys are likely to provide oversight of the third party testimonials and endorsements and prepare the written agreements.

Finally, we are no longer including our prior estimate that each adviser that uses a compensated testimonial or

endorsement will incur an initial burden of two hours to modify its policies and procedures to reflect the adviser's oversight of testimonials and endorsements, as this estimate related to initial burdens of the rule only. Table 2 summarizes the PRA estimates for the internal and external burdens associated with these requirements.

TABLE 2—TESTIMONIALS AND ENDORSEMENTS

	Internal hour burden		Wage rate ¹	Internal time costs	Annual external cost burden
ESTIMATES FOR TESTIMONIALS AND ENDORSEMENTS					
Revise and update each required disclosure	0.1 hours × 35 disclosures.	×	\$372 (compliance manager).	\$1,302	
	0.1 hours × 35 disclosures.	×	\$440 (compliance attorney).	\$1,540	
Oversight of compensated testimonials and endorsements and preparation of written agreements.	1 hours × 5 promoters.	×	\$372 (compliance manager).	\$1,860	
	1 hours × 5 promoters.	×	\$440 (compliance attorney).	\$2,200	
Total burden per adviser	17 hours			\$6,902	\$592
Total number of affected advisers	× 3,231			× 3,231	× 3,231 (× 20% of advisers that will use physical mail).
Total burden for testimonials and endorsements	54,927 hours			\$22,300,362	\$382,550.

Notes:

1. See SIFMA Report, *supra* footnote 8.

Third-Party Ratings in Advertisements

As referenced above, rule 206(4)–1(c) prohibits an investment adviser from including a third-party rating in an advertisement unless certain conditions are met, including that the adviser must clearly and prominently disclose (or reasonably believe that the third-party rating clearly and prominently discloses): (i) the date on which the rating was given and the period of time upon which the rating was based, (ii) the identity of the third-party that created and tabulated the rating, and

(iii) if applicable, that cash or non-cash compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

We previously estimated that approximately 50 percent of advisers will use third-party ratings in advertisements, but we are reducing this estimate to 15 percent.¹¹ We continue to believe that these advisers will typically use one third-party rating on an annual basis. We are no longer including our prior estimate that advisers will incur an initial internal burden of 3.0 hours to

draft and finalize the required disclosures for third-party ratings, as this estimate related to initial burdens of the rule only. Because many of these ratings or rankings are done yearly (*e.g.*, 2018 Top Wealth Adviser), we continue to estimate that an adviser that continues to use a third-party rating will incur ongoing, annual costs of 0.75 burden hours to draft the third-party rating disclosure updates.¹² Table 3 summarizes the PRA estimates for the internal and external burdens associated with these requirements.

TABLE 3—THIRD-PARTY RATINGS

	Internal hour burden		Wage rate ¹	Internal time costs	Annual external cost burden
ESTIMATES FOR THIRD PARTY RATINGS					
Update required disclosures	0.375 hours	×	\$372 (compliance manager)	\$139.50	
	0.375 hours	×	\$440 (compliance attorney)	\$165	
Total burden per adviser	.75 hours			\$304.50	
Total number of affected advisers	× 2,373			× 2,373	
Total burden for third-party ratings	1,780 hours			\$722,579	

Notes:

1. See SIFMA Report, *supra* footnote 8.

¹⁰ This estimate is based on the following calculation: 1 hour per each solicitor relationship × 5 promoter relationships.

¹¹ See *supra* footnote 7 and accompanying text (explaining that we have revised our estimates in

light of additional information that advisers must now report on Form ADV); specifically, 2,373 advisers indicated that they include third-party ratings in their advertisements in response to Item 5.L of Form ADV. 2,373 advisers/15,555 total advisers registered as of September 2023 =

approximately 15%; see also Adopting Release, *supra* footnote 1, at section IV.B.

¹² We believe that this burden will also be split evenly between an adviser's compliance attorney and compliance manager.

Performance Advertising

The marketing rule imposes certain conditions on the presentation of performance results in advertisements, as discussed above. Below we discuss the conditions that create “collection of information” requirements within the meaning of the PRA. First, the rule prohibits any presentation of gross performance unless the advertisement also presents net performance that meets certain criteria.¹³ Second, the rule prohibits any presentation of performance results of any portfolio or any composite aggregation of related portfolios, other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-, five-, and ten-year periods, except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.¹⁴ Third, the rule prohibits an advertisement from including related performance, unless it includes all related portfolios, subject to a conditional exception.¹⁵ Fourth, the rule prohibits an advertisement from including extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.¹⁶ Fifth, the rule also prohibits an advertisement from including predecessor performance, unless certain conditions are satisfied.¹⁷ Finally, the rule requires that an adviser that advertises hypothetical performance: (i) adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement; (ii) provide reasonably sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and (iii) provide (or, if the intended audience is an investor in a private fund provide, or offers to provide promptly) reasonably sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions.

We previously estimated that 95 percent, or 13,038 advisers, provide performance information in their

advertisements, but we are reducing this estimate to 40 percent.¹⁸ The estimated numbers of burden hours and costs regarding performance results in advertisements may vary depending on, among other things, the complexity of the calculations, the type of performance and the risks that investors may not understand the limitations of the information, and whether preparation of the disclosures is performed by internal staff or outside counsel.

Presentation of Net Performance in Advertisements

We are no longer including our prior estimate that an investment adviser that elects to present gross performance in an advertisement will incur an initial burden of 15 hours in preparing net performance for each portfolio, including the time spent determining and deducting the relevant fees and expenses to apply in calculating the net performance and then actually running the calculations, as this estimate related to initial burdens of the rule only. Based on staff experience, we estimate that the average investment adviser will present performance for 3 portfolios over the course of a year, excluding any related portfolios that an adviser may need to include for purposes of presenting related performance.¹⁹ As noted above, we estimate that 40 percent, or 6,186 advisers, provide performance information in their advertisements and thus will be subject to this collection of information burden.

We expect that the calculation of net performance may be modified every time an adviser chooses to update the advertised performance. We estimate that after initially preparing net performance for each portfolio, investment advisers will incur a burden of 3 hours to update the net performance for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant performance of each portfolio 3.5 times each year.²⁰

¹⁸ See *supra* note 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); specifically, 6,186 advisers indicated that they include performance results in their advertisements in response to Item 5.L of Form ADV. 6,186 advisers/15,555 total advisers registered as of September 2023 = approximately 40%; see also Adopting Release, *supra* footnote 1, at section IV.B.

¹⁹ The burden associated with calculating net performance in connection with presenting related performance is discussed below.

²⁰ We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (3 hours $\times$ 3.5 times per year = 10.5 hours; 10.5 hours/2 = 5.25 hours each).

Time Period Requirement in Advertisements

We are no longer including our prior estimate that an investment adviser that elects to present performance results in an advertisement will incur an initial burden of 35 hours in preparing performance results of the same portfolio for one-, five-, and ten-year periods (excluding private funds), taking into account that these results must be prepared on a net basis (and may also be prepared and presented on a gross basis), as this estimate related to initial burdens of the rule only. We estimate that after initially preparing one-, five-, and ten-year performance for each portfolio, investment advisers will incur a burden of 8 hours to update the performance for these time periods for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant performance 3.5 times each year.²¹

Related Performance

We are no longer including our prior estimate that an investment adviser that elects to present related performance in an advertisement will incur an initial burden of 30 hours, with respect to each advertised portfolio or composite aggregation of portfolios, in preparing the relevant performance of all related portfolios, as this estimate related to initial burdens of the rule only.

We estimate that 40 percent of advisers (or 6,186 advisers) will have other portfolios with substantially similar investment policies, objectives, and strategies as those offered in the advertisement and choose to include related performance.²² We estimate that after initially preparing related performance for each portfolio or composite aggregation of portfolios, investment advisers will incur a burden of 5 hours to update the performance for each subsequent presentation. We continue to estimate that advisers will update the relevant related performance 3.5 times each year.²³

²¹ We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (8 hours $\times$ 3.5 times per year = 28 hours; 28 hours/2 = 14 hours each).

²² See *supra* footnote 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); we assume that all advisers that indicated that they include performance results, see *supra* footnote 18 and accompanying text, include related performance.

²³ We believe that this burden will be split evenly between an adviser's compliance attorney and compliance manager (5 hours $\times$ 3.5 times per year = 17.5 hours; 17.5 hours/2 = 8.75 hours each).

¹³ Rule 206(4)–1(d).

¹⁴ *Id.* at (d)(2).

¹⁵ *Id.* at (d)(4).

¹⁶ *Id.* at (d)(5).

¹⁷ *Id.* at (d)(7).

Extracted Performance

We are no longer including our prior estimate that an investment adviser that elects to present extracted performance in an advertisement will incur an initial burden of 10 hours in preparing the performance results of the total portfolio from which the performance is extracted in order to provide or offer to provide such performance results to investors, as this estimate related to initial burdens of the rule only. For purposes of this analysis, we assume that 40 percent of advisers will include extracted performance.²⁴ We estimate that after initially preparing the performance of the total portfolio from which extracted performance is extracted, investment advisers will incur a burden of 2 hours to update the performance for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant total portfolio performance 3.5 times each year.²⁵ We also estimate that registered investment advisers may incur external costs in connection with the requirement to provide performance results of a total portfolio from which extracted hypothetical performance is extracted. We estimate that the average annual costs associated with printing and mailing this information upon request will be collectively \$592 for all documents associated with a single registered investment adviser.

Hypothetical Performance

We are no longer including our prior estimate that an investment adviser that elects to present hypothetical performance in an advertisement will incur an initial burden of 7 hours in preparing and adopting policies and procedures reasonably designed to ensure that the hypothetical

performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement, as this estimate related to initial burdens of the rule only. For purposes of this analysis, we estimate that 21 percent of advisers will include hypothetical performance in advertisements.²⁶

We continue to estimate that advisers that use hypothetical performance will disseminate advertisements containing hypothetical performance 20 times each year, including in certain one-on-one communications that meet the rule’s definition of advertisement. We estimate that after adopting appropriate policies and procedures, an adviser will incur a burden of 0.25 hours to categorize investors according to their likely financial situation and investment objectives pursuant to the adviser’s policies and procedures.²⁷

Additionally, we are no longer including our prior estimate that an investment adviser that elects to present hypothetical performance in an advertisement will incur an initial burden of 20 hours in preparing the information sufficient to understand the criteria used and assumptions made in calculating, as well as risks and limitations in using, the hypothetical performance, in order to provide such information, which may in certain circumstances be upon request, as this estimate related to initial burdens of the rule only. We estimate that after initially preparing the underlying information, investment advisers will incur a burden of 3 hours to update the information for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update their hypothetical performance, and thus the

underlying information, 3.5 times each year.²⁸

We estimate that registered investment advisers may incur external costs in connection with the requirement to provide this underlying information upon the request of an investor or prospective investor in a private fund. We estimate that the average annual costs associated with printing and mailing this underlying information upon request will be collectively \$592 for all documents associated with a single registered investment adviser.²⁹

Predecessor Performance

The marketing rule imposes conditions on an adviser’s use of predecessor performance. We are no longer including our prior estimate that an investment adviser that elects to present predecessor performance in an advertisement will incur an initial burden of 10 hours in preparing the relevant performance results and associated disclosures, as this estimate related to initial burdens of the rule only.

We previously estimated that 2% of advisers (or 275 advisers) will include predecessor performance in an advertisement, but we are increasing this estimate to 9%.³⁰ We estimate that after initially preparing predecessor performance, investment advisers will incur a burden of 1 hour to update the relevant disclosures and performance information for each subsequent presentation. For purposes of this analysis, we estimate that advisers will update the relevant disclosures 3.5 times each year.³¹ Table 4 summarizes the PRA estimates for the internal and external burdens associated with these requirements.

TABLE 4—PERFORMANCE

	Internal hour burden		Wage rate ¹	Internal time costs	Annual external cost burden
ESTIMATES FOR NET PERFORMANCE					
Updating performance	5.25	×	\$372 (compliance manager)	\$1,953	.....

²⁴ See *supra* footnote 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); we assume that all advisers that indicated that they include performance results, see *supra* footnote 18 and accompanying text, include extracted performance.

²⁵ We believe that this burden will be split evenly between an adviser’s compliance attorney and compliance manager (2 hours × 3.5 times per year = 7 hours; 7 hours/2 = 3.5 hours each).

²⁶ See *supra* footnote 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); specifically, 3,260

advisers indicated that they include hypothetical performance in their advertisements in response to Item 5.L of Form ADV. 3,260 advisers/15,555 total advisers registered as of September 2023 = approximately 21%. See also Adopting Release, *supra* footnote 1, at section IV.B.

²⁷ We believe that an adviser’s chief compliance officer will complete this task (20 presentations per year × 0.25 hours each = 5 hours per year).

²⁸ We believe that this burden will be split evenly between an adviser’s compliance attorney and compliance manager (3 hours × 3.5 times per year = 10.5 hours; 10.5 hours/2 = 5.25 hours each).

²⁹ See *supra* footnote 9 for a discussion of estimated mailing costs.

³⁰ See *supra* footnote 7 and accompanying text (explaining that we have revised our estimates in light of additional information that advisers must now report on Form ADV); specifically, 1,407 advisers indicated that they include predecessor performance in their advertisements in response to Item 5.L of Form ADV. 1,407 advisers/15,555 total advisers registered as of September 2023 = approximately 9%. See also Adopting Release, *supra* footnote 1, at section IV.B.

³¹ We believe that this burden will be split evenly between an adviser’s compliance attorney and compliance manager (1 hour × 3.5 times per year = 3.5 hours; 3.5 hours/2 = 1.75 hours each).

TABLE 4—PERFORMANCE—Continued

	Internal hour burden		Wage rate ¹	Internal time costs	Annual external cost burden
	5.25	×	\$440 (compliance attorney)	\$2,310	.....
Total burden per adviser	10.5	.....	.....	\$4,263	.....
Total number of affected advisers	× 6,186	.....	.....	× 6,186	.....
Sub-total burden	64,953 hours	.....	.....	\$26,370,918	.....
ESTIMATES FOR PERFORMANCE TIME PERIOD REQUIREMENT					
Updating performance	14	×	\$372 (compliance manager)	\$5,208	.....
	14	×	\$440 (compliance attorney)	\$6,160	.....
Total burden per adviser	28	.....	.....	\$11,368	.....
Total number of affected advisers	× 6,186	.....	.....	× 6,186	.....
Sub-total burden	173,208 hours	.....	.....	\$70,322,448	.....
ESTIMATES FOR RELATED PERFORMANCE					
Updating performance for all related portfolios	8.75	×	\$372 (compliance manager)	\$3,255	.....
	8.75	×	\$440 (compliance attorney)	\$3,850	.....
Total burden per adviser	17.5	.....	.....	\$7,105	.....
Total number of affected advisers	× 6,186	.....	.....	× 6,186	.....
Sub-total burden	108,255 hours	.....	.....	\$43,951,530	.....
ESTIMATES FOR EXTRACTED PERFORMANCE					
Updating performance	3.5	×	\$372 (compliance manager)	\$1,302	.....
	3.5	×	\$440 (compliance attorney)	\$1,540	.....
Total burden per adviser	7	.....	.....	\$2,842	\$592
Total number of affected advisers	× 6,186	.....	.....	× 6,186	× 6,186
Sub-total burden	43,302 hours	.....	.....	\$17,580,612	\$3,662,112
ESTIMATES FOR HYPOTHETICAL PERFORMANCE					
Updating policies and procedures	5	×	\$638 (chief compliance officer)	\$3,190	.....
Updating disclosures and underlying information	5.25	×	\$372 (compliance manager)	\$1,953	.....
	5.25	×	\$440 (compliance attorney)	\$2,310	.....
Total burden per adviser	15.5	.....	.....	\$7,453	\$592
Total number of affected advisers	× 3,260	.....	.....	× 3,260	× 3,260
Sub-total burden	50,530 hours	.....	.....	\$24,296,780	\$1,929,920
ESTIMATES FOR PREDECESSOR PERFORMANCE					
Updating disclosures and performance	1.75	×	\$372 (compliance manager)	\$651	.....
	1.75	×	\$440 (compliance attorney)	\$770	.....
Total burden per adviser	3.5	.....	.....	\$1,421	.....
Total number of affected advisers	× 1,407	.....	.....	× 1,407	.....
Sub-total burden	4,924.5 hours	.....	.....	\$1,999,347	.....
TOTAL ESTIMATED TIME BURDEN FOR PERFORMANCE REQUIREMENTS					
	445,173 hours	.....	.....	\$184,521,635	\$5,592,032

Notes:1. See SIFMA Report, *supra* footnote 8.**Total Hour Burden Associated With Rule 206(4)–1**

Accordingly, we estimate the total annual hour burden for investment advisers registered or required to be

registered with the Commission under proposed rule 206(4)–1 to prepare testimonials and endorsements, third-party ratings, and performance results disclosures will be 595,210 hours, at a time cost of \$219,833,026. The total

external burden costs would be \$5,974,582. The following chart summarizes the various components of the total annual burden for investment advisers.

TABLE 5—TOTALS

	Internal hour burden	Internal burden time cost	External cost burden
General Prohibitions	93,330	\$12,288,450	.....
Testimonials and Endorsements	54,927	22,300,362	\$382,550
Third-Party Ratings	1,780	722,579	.....
Performance	445,173	184,521,635	5,592,032
Total annual burden	595,210 hours	219,833,026	5,974,582

Cost burden is the cost of goods and services purchased to comply with rule 206(4)–1, such as legal and accounting services. The cost burden does not include the hour burden discussed in above. Estimates are based on the Commission’s examination and oversight experience. As summarized in Table 5 above, we estimate the total external cost per all advisers per year to be \$5,974,582, with the total per adviser per year to be \$384.³²

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 by August 30, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: June 25, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–14363 Filed 6–28–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100417; File No. SR–FICC–2024–009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the GSD Rules Relating to the Adoption of a Trade Submission Requirement

June 25, 2024.

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 June 12, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC’s Government Securities Division (“GSD”) Rulebook (“Rules”) ³ to (1) adopt a requirement that each Netting Member submits all eligible secondary market transactions, both for repurchase agreements and certain categories of cash transactions, to which it is a counterparty to FICC for clearance and settlement and define the scope of such trade submission requirement; (2) adopt ongoing membership requirements and other measures that would facilitate FICC’s ability to identify and monitor Netting Members’ compliance with the trade submission requirement, and adopt fines and other disciplinary actions to address a Netting Member’s failure to

submit transactions in compliance with that requirement; (3) enhance the Rules relating to the initial qualifications and ongoing standards for membership to improve FICC’s ability to manage the credit risks presented by Netting Members; and (4) make other revisions to the Rules to clarify, conform and enhance the disclosures of the Rules, as described below.

These proposed rule changes are primarily designed to comply with the requirements of Rule 17ad–22(e)(18)(iv)(A) and (B) under the Act, as described below.⁴

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Executive Summary

On December 13, 2023, the Commission adopted amendments to the covered clearing agency standards that apply to covered clearing agencies that clear transactions in U.S. Treasury securities, including FICC.⁵ These amendments require, among other things, that FICC establish objective, risk-based, and publicly disclosed criteria for participation that (i) require FICC’s Netting Members submit for clearance and settlement all of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Terms not defined herein are defined in the Rules, available at www.dtcc.com/-/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.

⁴ 17 CFR 240.17ad–22(e)(18)(iv)(A) and (B). See Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (“Adopting Release”, and the rules adopted therein referred to herein as “Treasury Clearing Rules”).

⁵ *Supra* note 4.

³² This estimate is based upon the following calculations: \$5,974,582 (total annual external cost burden)/15,555 (number of advisers) = \$384.

eligible secondary market transactions to which they are a counterparty; and (ii) identify and monitor Netting Members' submission of eligible secondary market transactions to which they are a counterparty, including how FICC would address a failure to submit transactions in accordance with this requirement.⁶

Therefore, under the Treasury Clearing Rules, FICC must require its Netting Members, as direct participants, to submit all eligible secondary market transactions to which they are a counterparty to it for central clearing. FICC is also obligated to adopt provisions that would facilitate its monitoring of Netting Members' compliance with the trade submission requirement and how it would address a Member's failure to comply. As described below, the proposed rules are designed to comply with those requirements.

First, the proposed changes would adopt an ongoing membership requirement that all Netting Members submit to FICC for clearance and settlement eligible secondary market transactions to which they are a party in a new GSD Rule 5 and would specify the scope of this requirement by defining "Eligible Secondary Market Transactions". The proposed rules would adopt the definition of Eligible Secondary Market Transactions and related definitions from the Treasury Clearing Rules,⁷ and would conform certain aspects of those defined terms to the GSD Rules to provide Netting Members with clarity on the scope of this trade submission requirement. FICC would also incorporate language into the defined terms that provides further clarification of the scope of this requirement, as described in greater detail below.

Second, the proposed changes would adopt provisions to enable FICC to identify and monitor Netting Members' ongoing compliance with the proposed trade submission requirement. These provisions would include affirmative obligations of Netting Members to notify FICC of non-compliance and confirm their ongoing compliance with this requirement. These provisions would also provide FICC with the authority to request information or review a Netting Member's books and records to monitor and verify, as needed, such compliance. Therefore, FICC's proposal would require Netting Members to utilize their existing frameworks for monitoring adherence to applicable regulatory obligations—specifically, their

compliance and independent audit functions—to monitor and affirm their ongoing compliance with the trade submission requirement. FICC's authority to request information and examine a Netting Member's books and records would allow FICC to take affirmative action when it deems such action necessary to fulfill its requirement to identify and monitor Netting Members' compliance with the requirement.

The proposed rule changes would also adopt disciplinary measures FICC would take if a Netting Member fails to meet its obligations under the new rules, which would include continuing fines until the failure has been remediated and notifications to applicable regulatory authorities. This fine would be incorporated into the GSD Fine Schedule.

In adopting the Treasury Clearing Rules, the Commission recognized the benefits central clearing brings to the markets served by a central counterparty, like FICC, and, consequently, the importance of the risk management measures employed by central counterparties.⁸ Therefore, in connection with adopting the trade submission requirement, these proposed rule changes would also include enhancements to the initial qualifications for direct membership with GSD and the ongoing membership obligations of Netting Members. The proposed enhancements would improve the clarity and transparency of the GSD Rules regarding the standards for membership and would provide FICC with additional measures to strengthen its ability to manage the counterparty credit risks that are presented by its Netting Members.

Finally, the proposed rule changes would include non-substantive revisions to re-organize, clarify and conform the GSD Rules, as described below.

Background

FICC, through GSD, serves as a central counterparty and provider of clearance and settlement services for the U.S. government securities markets. GSD's central counterparty services are available directly to entities that are approved to be Netting Members and indirectly to other market participants through its indirect access models—the Sponsored Service or correspondent clearing/prime broker services.⁹ FICC's

direct participants include brokers, dealers, inter-dealer brokers and both U.S. and non-U.S. banks. Currently, other market participants, including investment funds, pension plans and other buy-side institutions, generally access GSD's central counterparty services through one of its indirect access models.

Through GSD, FICC provides real-time trade matching, clearing, risk management and netting for cash purchases and sales of eligible securities, as well as repurchase and reverse repurchase transactions involving eligible securities ("Repo Transactions"). Eligible securities include securities issued by the U.S. Treasury Department ("U.S. Treasury Securities") and securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.¹⁰

In its role as central counterparty, FICC novates eligible transactions that are submitted to it for clearance and settlement. Novation is defined in the Rules as the termination of deliver, receive, and related payment obligations between Netting Members and the replacement of such obligations with identical obligations to and from FICC, pursuant to the provisions of the Rules, and occurs at the time a submitted transaction is compared by FICC.¹¹ As recognized by the Commission in the Adopting Release, by "novating transactions (that is, becoming the counterparty to both sides of a transaction), [FICC] addresses concerns about counterparty risk by substituting its own creditworthiness and liquidity for the creditworthiness and liquidity of the counterparties."¹²

The Adopting Release identifies the important operational, risk management and other benefits of central clearing, which include the reduction in counterparty credit risk through novation of trades by the central counterparty, centralized default management, and efficiencies provided by multilateral netting.¹³ The efficacy of FICC's own risk management framework

(Executing Firm Trades) (currently describing the correspondent clearing/prime broker services), *supra* note 3. FICC has separately proposed enhancements to its access models, including revisions to rename the correspondent clearing/prime broker service as the Agent Clearing Service, designed to facilitate greater access to its services. See Securities Exchange Act Release No. 99817 (Mar. 21, 2024), 89 FR 21362 (Mar. 27, 2024) (SR-FICC-2024-005).

¹⁰ See definition of "Eligible Securities" in Rule 1, *supra* note 3.

¹¹ See definition of "Novation" in Rule 1, *supra* note 3.

¹² *Supra* note 4, at 8–9.

¹³ *Supra* note 4, at 14–17.

⁶ *Id.* 17 CFR 240.17ad–22(e)(18)(iv)(A), (B).

⁷ *Supra* note 4. See also 17 CFR 240.17ad–22(a).

⁸ *Supra* note 4.

⁹ See Rule 2 (Members) (providing that FICC shall make its services available to entities that are approved to be Members of GSD); Rule 3A (Sponsoring Members and Sponsored Members) (describing the Sponsored Service) and Rule 8

is critical to its ability to provide these benefits to the market it serves. This framework includes initial and ongoing participation criteria and requirements relating to financial resources, creditworthiness and operational capability.

These membership standards are designed to limit the risks a Netting Member may present to FICC and the other Netting Members by ensuring, among other things, that applicants to be Netting Members have the financial and operational capabilities to meet the obligations of membership on an ongoing basis. The Rules also provide FICC with the ability to monitor Netting Members' adherence to continued suitability for membership. These requirements are designed to balance appropriate risk management with providing fair and open access by market participants; they are objective, risk-based, and are set forth in Rules 2A and 3.

Description of Proposed Rule Changes

1. Adopt Trade Submission Requirement and Define Scope of Requirement

The proposed rule changes would adopt an ongoing membership obligation that each Netting Member submit to FICC for clearance and settlement all "Eligible Secondary Market Transactions" to which it is a counterparty. This requirement would be added to a new Rule 5¹⁴ and would be adopted to comply with the amendments to Rule 17ad–22(e)(18)(iv)(A) under the Act.¹⁵

Rule 5 would also provide that Netting Members are permitted, but not required, to submit to FICC transactions that are outside the scope of the new trade submission requirement.

a. Scope of Trade Submission Requirement

The proposed rule changes would specify the scope of the trade submission requirement by adopting the definition of "Eligible Secondary Market Transactions" and other related definitions from the Treasury Clearing Rules.

The Commission's definition of Eligible Secondary Market Transactions includes secondary market transactions in U.S. Treasury Securities where the transaction is of a type that is accepted

by FICC for clearance and settlement and is one of three specified types of transactions. FICC would adopt this language as codified in the definition of "Eligible secondary market transaction" in Rule 17ad–22(a) under the Act,¹⁶ with revisions to conform the language of the definition to defined terms in the Rules. Specifically, FICC would adopt a new defined term for "U.S. Treasury Securities" in Rule 1 and would use this term in the definition. FICC would also replace reference to "clearance and settlement" in the definition with its defined term for "Novation", which, as described above, encompasses its central counterparty role in the clearance and settlement process.

Rule 5 would further provide, as required by the Treasury Clearing Rules, that Eligible Secondary Market Transactions that meet the initial criteria must also be one of three types of transactions: (1) any Repo Transaction collateralized by U.S. Treasury Securities in which at least one counterparty is a Netting Member; or (2) purchase or sale cash transactions in U.S. Treasury Securities between a Netting Member and (a) any counterparty if the Netting Member brings together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions; or (b) a Broker or Dealer. Again, FICC would adopt this language from the statutory definition of Eligible Secondary Market Transactions, with revisions only to incorporate defined terms from the Rules. For example, FICC would replace references to "direct participant" in the statutory definition of Eligible Secondary Market Transactions with "Netting Member" and would use the defined terms for "Broker" and "Dealer" from Rule 1.

FICC would also adopt new defined terms to improve the clarity of the scope of the trade submission requirement. Such revisions would not change the scope or applicability of the statutory definition of Eligible Secondary Market Transactions and would be intended only to provide clarity regarding the applicability of this term within the Rules.

First, FICC would define "Treasury Repo Transaction" in Rule 1 to mean a Repo Transaction collateralized by Eligible Treasury Securities. FICC would use this new defined term in the definition of Eligible Secondary Market Transactions. Second, FICC would define "Buy/Sell Transactions" in Rule 1 to mean a Transaction that is either the purchase or sale of an Eligible

Netting Security in exchange for cash for which the trade data is submitted to FICC for Novation. FICC would use this term in the definition of Eligible Secondary Market Transactions.¹⁷

The statutory definition of Eligible Secondary Market Transactions also specifically excludes four types of Repo Transactions. FICC would similarly adopt these exclusions, updating the language only to incorporate defined terms to improve the clarity of the requirement. For example, FICC would use the proposed definition of "Treasury Repo Transaction" in each of the four exclusions from the definition of Eligible Secondary Market Transactions.

The statutory exclusions to the trade submission requirement that FICC would include in Rule 5 are (1) Treasury Repo Transactions and Buy/Sell Transactions in which one of the counterparties is a central bank, a sovereign entity, an international financial institution, or a natural person; (2) Treasury Repo Transactions in which one of the counterparties is either a U.S. covered clearing agency, a derivatives clearing organization or a foreign central counterparty; (3) Treasury Repo Transactions in which one of the counterparties is a state or local government; and (4) Treasury Repo Transactions in which one of the counterparties is an "Affiliated Counterparty" of the Netting Member, provided that the affiliate submits to FICC for Novation all other Treasury Repo Transactions to which it is a counterparty.

For the first exclusion, FICC would adopt the statutory definitions of "Central Bank", "Sovereign Entity", "International Financial Institution" and "Local Government" into Rule 1 from Rule 17ad–22(a) under the Act, without any alteration to these definitions.¹⁸

For the fourth exclusion from the trade submission requirement, FICC would adopt the statutory definition of "Affiliated Counterparty" but would include in this definition additional language to allow the definition to interoperate with the Commission's application and interpretation of this particular exclusion. Specifically, FICC would provide that an "Affiliated Counterparty" means a counterparty that meets the specified criteria "or as

¹⁴ The rules currently in Rule 5, describing the Comparison System, would be moved to a new Rule 6. References to Rule 5 would be updated throughout the Rules to reflect this change. See definitions of "Novate" and "Yield Comparison Trade" in Rule 1; Sections 6 and 7 of Rule 3A; and Section 9 of Rule 3B. *Supra* note 3.

¹⁵ 17 CFR 240.17ad–22(e)(18)(iv)(A).

¹⁶ 17 CFR 240.17ad–22(a).

¹⁷ The term "Buy/Sell Transaction" would also be used in the definition of "Bilateral Transaction" and "Brokered Transaction" in Rule 1 to clarify the meaning of those terms and would replace lowercase uses of this term in other places in the Rules with the proposed defined term. *Supra* note 3.

¹⁸ 17 CFR 240.17ad–22(a).

otherwise may be provided for by the SEC pursuant to the Exchange Act". FICC is proposing to include this language to make clear that this defined term is intended to incorporate the Commission's own application and interpretation of this exclusion from the scope of the trade submission requirement.¹⁹ The additional language proposed to the defined term would allow FICC to continue to apply the Commission's interpretation of this definition, including any further interpretation that the Commission may provide through future rulemaking.

FICC is also proposing to clarify language in the Rules to make clear that a bank and its branches must all apply under the same membership, as one Bank Netting Member. This proposed revision would clarify that a branch and its parent bank are considered the same legal entity under the GSD Rules and not separate affiliates. The proposed changes would remove reference to a bank applying for membership through its branch or agency from various places in Rules 2A and 3, including (1) updating eligibility to be a Bank Netting Member to remove the limitation that non-U.S. banks participate through a U.S. branch in Section 3(a)(i) of Rule 2A; (2) updating the description of financial requirements applicable to Foreign Persons that are banks to remove reference to an application for membership through a U.S. branch in Section 3(b)(ii)(E)(2) of Rule 2A; and (3) removing reference to a bank's branch in the description of the annual attestation that must be provided by non-U.S. bank Netting Members in Section 2(iii)(a) of Rule 3.

b. Remove Existing Trade Submission Requirements

In connection with adopting this trade submission requirement, FICC would remove the existing trade submission requirements from the GSD Rules. These requirements are currently set forth in Section 3 of Rule 11, Section 2 of Rule 15, and Section 2 of Rule 18.

Section 3 of Rule 11 requires Netting Members to submit data on all of that Netting Member's trades other than

Repo Transactions (i) with other Netting Members that are eligible for netting and (ii) executed by a Covered Affiliate (as defined in Rule 1) that meet certain criteria. Section 2 of Rule 18 includes an identical trade submission obligation with respect to trade data on Netting Members' Repo Transactions. Both Rules exclude certain trades from the submission requirement, including trades executed between Netting Members and their Affiliates (defined in these Rules as "Affiliate Trades"). Section 2 of Rule 15 requires that certain broker Netting Members submit to FICC trade data regarding their brokered activity upon FICC's request.

FICC is proposing to remove these provisions from the Rules.²⁰ The activity that would be required to be submitted to FICC pursuant to the trade submission requirement proposed to be added to Rule 5 pursuant to the Treasury Clearing Rules would include activity that is covered by these existing requirements. Therefore, FICC believes it is unnecessary to retain these trade submission requirements in the Rules with the adoption of the new requirements to Rule 5.

In connection with this change FICC would delete the defined term "Covered Affiliate" from Rule 1.

c. Retain Prohibition Against Pre-Netting Trade Data

FICC is proposing to move and consolidate the existing restriction against pre-netting practices from Section 3 of Rule 11 and Section 2 of Rule 18 into Section 4 of the new Rule 5. These provisions provide that any trade data that is required to be submitted to FICC must be submitted on a trade-by-trade basis with the original terms of the trade unaltered, and specifically prohibits pre-netting practices. The receipt of unaltered trade data permits FICC's market risk management processes to monitor trades closer to the time of execution and manage the risk exposures of those trades earlier in the day. Maintaining the prohibition against pre-netting practices for trades that are required to be submitted to FICC will, therefore, support the application of the risk management benefits of central clearing to this trading activity and support the goals of the Treasury Clearing Rules.

In moving and consolidating these provisions into Rule 5, FICC would also update the disciplinary action it may

take if a Netting Member fails to comply with these requirements. Currently, Rules 11 and 18 provide that a Netting Member that violates this requirement "may be reported to the appropriate regulatory body, placed on the Watch List and/or subject to an additional fee" and that FICC may further discipline the Netting Member pursuant to Rule 48.²¹ FICC is proposing to remove these disciplinary measures and instead provide that a Netting Member that has violated the prohibition against pre-netting practices pursuant to the new Section 4 of Rule 5 may be subject to an existing provision in the Rules that requires, in certain circumstances, an additional charge to a Netting Member's Required Fund Deposit, which would, as part of this proposed rule change, be defined as a "Credit Compliance Charge".

FICC currently has the authority to collect an additional charge as part of a Netting Member's Required Fund Deposit if the Member fails to comply with applicable continuing membership standards, pursuant to Section 8 of Rule 3.²² This additional amount is currently calculated as equal to the greater of either: (i) \$1,000,000, or (ii) 25 percent of the normal calculation of the Netting Member's Required Fund Deposit. FICC proposes to define this existing additional charge as the "Credit Compliance Charge" and replace the description of this charge in Rule 3 with a defined term in Rule 1 and in the Margin Component Schedule.²³ Because the prohibition against pre-netting practices is designed to support FICC's risk management of trades submitted for clearance and settlement, FICC believes this charge is an appropriate disciplinary measure for a violation of the requirement. This proposed change would apply a disciplinary measure that is consistent with the disciplinary measure applicable when a Netting Member fails to comply with other membership obligations that are also designed to mitigate risk presented to FICC and its other Netting Members.

In connection with this proposed change, FICC would also delete the

¹⁹ Additionally, the Adopting Release discusses how the exclusion for Affiliated Counterparties is conditioned on the affiliate submitting all Treasury Repo Transactions to which it is a counterparty for central clearing. However, the Adopting Release also specifies that "[b]y referring to all other repos or reverse repos, the exemption clarifies that the requirement does not encompass transactions between the [Netting Member] and the [Affiliated Counterparty], i.e., the transactions that are excluded, and also does not encompass the [Affiliated Counterparty's] transactions that would otherwise be excluded" from the trade submission requirement under other exclusions described above. *Supra* note 4, at 86.

²⁰ FICC has separately proposed to remove Section 1 of Rule 15, *see* Securities Exchange Act Release No. 99817 (Mar. 21, 2024), 89 FR 21362 (Mar. 27, 2024) (SR-FICC-2024-005). Therefore, with the proposed removal of Section 2 of Rule 15, Rule 15 will be revised to be reserved for future use.

²¹ Section 3 of Rule 11, Section 2 of Rule 18, *supra* note 3. *See also* Rule 48 (addressing FICC's general authority to discipline any Member for violation of the Rules), *id.*

²² *Supra* note 3.

²³ FICC recently proposed changes to the Rules that would move the margin calculation methodology, including the relevant defined terms currently located in Rules 1 and 4, into a new Margin Component Schedule. *See* Securities Exchange Act Release No. 99844 (Mar. 22, 2024), 89 FR 21603 (Mar. 28, 2024) (SR-FICC-2024-007). Therefore, FICC is proposing to also describe the calculation of the Credit Compliance Charge in the proposed Margin Component Schedule.

defined term for “Pre-Netting of Trades” from Rule 1 as that term would be incorporated into the new Section 4 of Rule 5.

2. Adopt Provisions To Monitor and Enforce the Trade Submission Requirement

The proposed changes would adopt provisions to facilitate FICC’s ability to identify and monitor the trade submission requirement. These proposed changes would specify FICC’s ability to request information from both the Netting Member and from its applicable regulatory authority, and to review Netting Members’ books and records, as and when FICC deems it necessary to monitor Members’ compliance with the requirement. The proposed changes would also adopt affirmative, ongoing membership obligations of Netting Members to monitor their own continuous compliance with the requirement, proactively report any instances of non-compliance with the requirement, and periodically affirm ongoing compliance to FICC, as described below.

While FICC would adopt provisions that would allow it to request information from Netting Members and their applicable regulatory authority, and to inspect Netting Members’ books and records when it deems such review necessary, given that Netting Members’ internal operations, organizational structures and trading practices vary greatly, FICC believes it is also appropriate to apply an approach that entails some degree of Netting Member self-monitoring and self-reporting under the general obligation to comply with FICC’s ongoing membership requirements. Therefore, and as recommended in the Adopting Release,²⁴ FICC is proposing to require that Netting Members monitor their own compliance with the requirement and affirm such compliance to FICC through a written attestation and report, as described in detail below.

a. FICC’s Authority To Request Information and Inspect Books and Records

FICC would describe in Section 2 of Rule 5 its authority to take certain actions, and Netting Members’ agreement to comply with such actions, in connection with its monitoring of

Netting Members’ ongoing compliance with the trade submission requirement. FICC currently has the authority to take each of these actions under Rules 2A and 3 in connection with its monitoring of Members’ compliance with the requirements of membership generally. Therefore, FICC is not proposing to expand its authority to request information, or review the books and records of its Members, but would clarify that it may exercise these existing rights in connection with its monitoring of the trade submission requirement.

First, Netting Members would be required to submit to FICC any reports or other information that FICC may reasonably request, as also set forth in Section 2 of Rule 3, which requires that Netting Members submit to FICC “the reports, financial or other information set forth below and such other reports, financial and other information as the Corporation from time to time may reasonably require.” The proposed rule change would specify that this information could include, for example, reports of trading activity, trade data, and the Netting Member’s policies, procedures or other controls related to its compliance with the trade submission requirement. Second, Netting Members would agree that FICC may inspect their books and records, as also set forth in Section 10 of Rule 3. Finally, Netting Members would authorize FICC to request information regarding a Netting Member from that firm’s Designated Examining Authority or Appropriate Regulatory Agency, which FICC may also do under Rule 2A, Section 6 in evaluating an applicant to be a Netting Member. This provision would incorporate a suggestion in the Adopting Release that reviewing information from regulatory organizations would be an appropriate method for FICC to assess its Netting Members’ compliance with the requirement.²⁵ The proposed rule would specify that the information that FICC may request from such authority or agency could include, for example, information related to such authority or agency’s examination of the Netting Member’s trading practices, trading reports and other records.

As noted above and described below, FICC would primarily rely on Netting Members to monitor their own compliance with the trade submission requirement. However, these proposed

changes to clarify FICC’s existing rights to request information and examine Netting Members’ books and records would allow FICC to verify such compliance, for example, before it takes action to enforce the requirement.

b. Requirement To Notify FICC of Non-Compliance

Second, the proposed rule changes would require each Netting Member to notify FICC in writing within 2 Business Days from the date on which it learns that it is no longer in compliance with the trade submission requirement. Currently, under Section 7 of Rule 3, Members are required to notify FICC if they are no longer in compliance with the qualifications, standards or other requirements of membership.²⁶ This proposed rule change would clarify for Members the application of this existing requirement to a failure to comply with the trade submission requirement.

The proposed rule change would also specify that notification of non-compliance shall include all relevant facts that are known to the Netting Member at the time of the notification and would identify examples of such information. Examples of such relevant facts would include (i) the approximate duration of the non-compliance with the trade submission requirement; (ii) either the time when non-compliance with the trade submission requirement was remediated or the anticipated steps to be taken to remediate such non-compliance and the approximate time when non-compliance is expected to be remediated; and (iii) identification and contact information of the member of the Netting Member’s Controlling Management (as such term is defined in the Rules)²⁷ that is overseeing the matter.

FICC believes this information would assist it in assessing the status and extent of the Netting Member’s non-compliance with this requirement and the appropriate, applicable disciplinary measures. As discussed below, FICC would provide Netting Members that self-report non-compliance with the trade submission requirement with a cure period before applying disciplinary

²⁶ Section 7 of Rule 3, *supra* note 3.

²⁷ See Rule 1 (“The term “Controlling Management” shall mean the Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer, or their equivalents, of an applicant or Member or such other individuals or entities with direct or indirect control over the applicant or Member; provided that with respect to a Registered Investment Company Netting Member or an applicant to become a Registered Investment Company Netting Member, the term “Controlling Management” shall include the investment manager.”), *supra* note 3. See discussion below regarding a proposed change to include a Netting Member’s Chief Risk Officer to this definition.

²⁴ *Supra* note 4, at 129 (“... U.S. Treasury securities CCA could require direct participants to submit to the CCA information regarding their U.S. Treasury securities transactions or to require attestations from senior officials of the CCA’s direct participants as to their submission of the required transactions and compliance with their obligations to submit such transactions.”)

²⁵ See *id.*, (“The Commission further agrees that a U.S. Treasury securities CCA also could review publicly available information and information made available to it by regulatory and self-regulatory organizations as part of its assessment of its direct participants’ compliance.”)

measures. Finally, by requiring that a Netting Member identify a member of its Controlling Management that is overseeing the matter, the proposed rule change would ensure that the Netting Member has appropriately escalated the non-compliance internally and that the matter is being addressed by its senior management.

c. Annual Trade Submission Attestation

Third, the proposed changes would require each Netting Member to provide FICC with an annual attestation regarding its ongoing compliance with the trade submission requirement. The requirement to provide this attestation would be included in Section 2 of Rule 5, and the attestation would be described in Section 2(iii)(c)(1) of Rule 3, as an ongoing requirement of membership. FICC would also adopt a definition of the “Annual Trade Submission Attestation” in Rule 1.

The Annual Trade Submission Attestation would be required to be submitted to FICC by each Netting Member no less than annually, and FICC would set the date such attestations are due on an annual basis. Such an attestation would be signed by the Netting Member’s Chief Compliance Officer or most senior authorized officer of the Netting Member who performs a similar function. FICC believes that a Netting Member’s Chief Compliance Officer, or similar senior officer, is the appropriate level of authority to sign and deliver this attestation as such officers are typically responsible for monitoring a firm’s compliance with applicable laws, regulations, and other ongoing requirements.

Each Annual Trade Submission Attestation would be required to be on a form that is provided by FICC and would include the following attestations, as would be set forth in Rule 3: (i) the attesting officer has read and understands the trade submission requirement set forth in Rule 5; (ii) the Netting Member has established, maintains and enforces policies, procedures or other controls that are reasonably designed to ensure ongoing and continued compliance with the trade submission requirement; (iii) such controls are reasonably designed to promptly identify and remediate any occurrences of non-compliance with the trade submission requirement; and (iv) the Netting Member has, at all times during the 12 months prior to the date of the attestation, complied with the trade submission requirement set forth in Rule 5.

Netting Members have an existing similar requirement to submit an annual attestation with respect to their

obligations to the Capped Contingency Liquidity Facility under Rule 22A. Therefore, while this attestation covers a different area of ongoing membership requirements, the requirement will not be unfamiliar to existing Netting Members.

FICC would adopt a fine in the Fine Schedule that would apply when a Netting Member fails to submit the Annual Trade Submission Attestation on time and in the form required. The fine would be \$10,000, would apply on the Business Day following the day on which the attestation was required to be provided to FICC and would continue to be applied every 10 Business Days until the completed and correct attestation is provided to FICC. By setting this fine at a relatively higher value than other existing fines and by structuring the fine to be applied periodically until this requirement has been fulfilled, FICC believes this continuing fine would be an appropriate and effective measure to deter non-compliance and signal to Netting Members that the delivery of the attestation is an important obligation of membership.

d. Triennial Independent Trade Submission Review and Report

FICC is proposing to require that each Netting Member conduct an independent review of its ongoing compliance with the trade submission requirement on a triennial basis and provide a report of that review to both FICC and the Netting Member’s most senior governing body. FICC believes that a more comprehensive review of a Netting Member’s compliance, performed by an independent body on a less frequent basis would be an important mitigant to any contravention of the trade submission requirement. The requirement to conduct a review and provide a report of the review to FICC would be included in Section 2 of Rule 5, and the review and report would be described in Section 2(iii)(c)(2) of Rule 3, as an ongoing requirement of membership. FICC would also adopt definitions of the “Triennial Independent Trade Submission Review” and the “Triennial Independent Trade Submission Report” in Rule 1.

The Triennial Independent Trade Submission Review would be required to be conducted following procedures and standards that each Netting Member has established to ensure the review is comprehensive and adequate to sufficiently assess and confirm the Netting Member’s ongoing compliance with the trade submission requirement for the three-year period prior to the review. Because each Netting Member’s review would need to be appropriate for

its own business practices and organization, FICC would permit each Netting Member to establish its own procedures and standards for conducting this review. FICC would have the authority, as discussed above, to review such procedures and standards when it deems necessary to confirm they are designed to ensure an appropriate assessment of compliance pursuant to the Rules.

The proposed rule would permit Netting Members to engage either an internal independent group or an external third party to conduct this review. An independent external third party could include, for example, an auditor, consultant, or other independent firm that has experience providing independent attestations, certifications or opinions in the securities market industry. Netting Members that choose to engage an external independent third party to conduct the Triennial Independent Trade Submission Review would need to receive FICC’s prior approval of that third party. In approving an independent third party, FICC would verify that the third party has the requisite expertise, as set forth in the Rules, to conduct the triennial review. If a Netting Member chooses to use an internal independent group to conduct the triennial review, such group must report directly to the Netting Member’s board of directors, a committee of that board or to the equivalent senior most governing body. Such requirement would ensure the independence of this group from the business areas that are subject to the review. Allowing Netting Members to choose to use either an internal group or an external third party to conduct the Triennial Independent Trade Submission Review provides flexibility and acknowledges the different internal capabilities and resources of different Netting Members.

Each Netting Member would be required to complete a report of the Triennial Independent Trade Submission Review, in a form that would be prescribed by FICC, that is signed by the individual who oversaw the review and, similar to the annual attestation, by the firm’s Chief Compliance Officer or most senior officer who performs a substantially similar function. FICC would require that Netting Members provide the Triennial Independent Trade Submission Report to its board of directors or equivalent senior most governing body, before delivering the report to FICC. FICC believes that involving the senior leaders at a Netting Member in the triennial review and report would allow for appropriate

oversight and would signal the criticality of compliance with this trade submission requirement to senior levels of a Netting Member's organization.

Proposed Section 2(iii)(c)(2) of Rule 3 would identify the components of the Triennial Independent Trade Submission Report, which would (i) describe the procedures, methodology and/or standards employed in conducting the Triennial Independent Trade Submission Review, (ii) identify the books, records, processes, operations and/or controls of the Netting Member that were examined in conducting the triennial review; and (iii) state the conclusions of the review, including whether the Netting Member has complied with the trade submission requirement on an ongoing basis during the period covered by the review.

FICC would adopt a fine in the Fine Schedule that would apply when a Netting Member fails to complete the triennial review and submit the triennial report to FICC by the time and in the form prescribed by FICC. The fine would be \$15,000 and would apply on the Business Day following the day on which the attestation was required to be provided to FICC and would continue to be applied every 10 Business Days until the completed and correct attestation is provided to FICC.

Section 2(iii)(c)(2) of Rule 3 would address what would occur if FICC determines, in its sole discretion, that a Triennial Independent Trade Submission Review conducted on behalf of a Netting Member is incomplete, inadequate or otherwise does not meet the requirements of the Rule. If this were to occur, the Rule would provide that FICC shall require the Netting Member to complete a revised review that addresses the deficiencies of the prior review and would impose a fine on the Netting Member as if such firm had not submitted a Triennial Independent Trade Submission Report. Such fine would continue to apply until the revised report is provided to FICC.

e. Enforcement of Trade Submission Requirement

Finally, Section 3 of Rule 5 would provide that a Netting Member that fails to comply with the trade submission requirement would be subject to a fine under the Fine Schedule and that the Netting Member's Designated Examining Authority or Appropriate Regulatory Agency, as applicable, and the Commission would be notified of that failure. FICC believes that notice of a Netting Member's failure to comply with the trade submission requirement to other appropriate regulatory

organizations is an appropriate measure and would be an effective deterrent to non-compliance.

Within the Fine Schedule, FICC would adopt a fine of \$20,000 and, similar to the fines that would be imposed for a failure to submit a required attestation or triennial report, the fine would continue to be assessed until FICC has determined, in its sole discretion, that the failure to comply has been remediated. FICC would assess this fine on a longer timeframe—every 30 Business Days—to provide Netting Members with an appropriate period of time to remediate non-compliance.

Section 3 of Rule 5 would provide Netting Members who notify FICC of their non-compliance with the trade submission requirement with a cure period of 10 Business Days before the applicable disciplinary measures are taken. FICC believes it is appropriate to adopt this cure period to encourage Netting Members to effectively monitor their own compliance with the requirement and notify FICC when non-compliance is discovered.

3. Adopt Enhancements to the Initial Qualifications and Ongoing Membership Standards Applicable to Netting Members

The proposed revisions to the Rules would also enhance the membership standards for applicants and Netting Members subject to GSD's initial and ongoing requirements under Rules 2A and 3. These enhancements, described below, are designed to clarify and strengthen GSD's membership standards to help mitigate the credit exposure that Netting Members present and, thus, continue to promote the safety and soundness of FICC, its Members, and the industry it serves.

These proposed changes are consistent with the authority provided to FICC under Section 17A(b)(4)(B) of the Act, which provides that a registered clearing agency such as FICC may, among other things, deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as prescribed by the rules of the registered clearing agency.²⁸ Furthermore, the registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.²⁹

First, FICC proposes to make several changes to Rule 2A, which addresses

initial membership requirements. In addition to various technical, ministerial, supplemental, and other conforming and clarifying changes, FICC proposes the following changes to Rule 2A:

- Require applicants to always maintain adequate liquidity resources to meet their actual or projected funding obligations to FICC, as determined by FICC. Although already implicit in the Rules, explicitly stating this requirement would provide greater notice and transparency to applicants.

- In assessing the adequacy of an applicant's liquidity resources, authorize FICC to consider, for example, the source of liquidity and clearly state that FICC may deny membership to an applicant if the applicant is unable to satisfactorily demonstrate to FICC, in FICC's judgement, that the applicant maintains adequate liquidity resources. Given the importance liquidity serves in supporting an applicant's resiliency, it is imperative that FICC be able to fully assess the quality and quantity of liquidity of its applicants.

- Update current language that addresses consideration of the financial resources of the applicant's parent company to more broadly address the financial resources of a Guarantor, as such term would be defined in Rule 1 by the proposal, since a guaranty may come from an entity other than the parent company, and allow such consideration to be made by FICC instead of its Board, as such a decision aligns better with FICC management than with the Board.

- When a guaranty is provided, (i) authorize FICC the option to engage external legal counsel to review the validity and enforceability of a Guarantor's guaranty, with the costs and expenses of such review being borne by the applicant or Member; and (ii) require a Guarantor to provide FICC the Guarantor's annual audited Financial Statements and such other information as FICC believes necessary or appropriate in order to assess the Guarantor's ability to guarantee the obligations of the applicant or Member to FICC for the duration of the guaranty. Given the importance that a Guarantor's guaranty plays in supporting an applicant, it is imperative that FICC be able to fully assess the validity of that guaranty and the Guarantor's financials.

- Clarify the concept of "business history" of an applicant to the "operating and management history and outlook" of the applicant, to more clearly encompass the scope of "business history" that FICC considers.

- Extend the required operating history of an applicant from six months

²⁸ 15 U.S.C. 78q-1(b)(4)(B).

²⁹ *Id.*

to one year or, in the alternative, permit FICC to determine whether the applicant has not only personnel with sufficient operational background and experience, as currently allowed, but also sufficient financial background and experience as well, to conduct the business of the applicant. FICC believes one full year of operating history would be a better measure of the applicant's wherewithal than merely six months, and that the financial background and experience of the applicant's personnel are equally as important to consider as their operational background and experience.

- Require applicants to provide FICC with a business plan, supported by financial assumptions and projections that includes the applicant's proposed use of GSD's services that demonstrates, to the satisfaction of FICC, that the applicant has a viable plan to meet and sustain the financial and operational responsibility standards and financial obligations under the Rules. Absent a viable business plan, FICC could be exposed to greater risk from the applicant, if it were to become a Member.

- As part of an applicant's membership application, allow FICC to require an assessment of the applicant's business plan by an independent third-party consultant, at the expense of the applicant, to evaluate the reasonableness and viability of the plan, including its assumptions and projections, and explicitly state that failure to provide such a plan, when requested, may result in denial of the application. Again, given the importance that a viable business plan can have in supporting an applicant's obligations to FICC, it is imperative that FICC be able to fully assess that plan.

- Explicitly authorize FICC to deny an applicant's application if FICC believes the applicant does not have individuals with relevant industry experience and appropriate history of compliance with laws and regulations staffed in the following senior management roles, as applicable, prior to activation of the applicant's membership: President and/or Chief Executive Officer, Chief Financial Officer, Chief Risk Officer (who would also be added to the current definition of "Controlling Management" in Rule 1), General Counsel, OFAC Officer and Cybersecurity Officer. Similar to having a viable business plan, it is important that Members are adequately staffed with key personnel to help manage the Member's obligations to FICC.

- Clarify, with respect to financial or other reports, opinions, or information (collectively, "information") that an

applicant may be required to provide FICC, that (i) FICC may request such information as it deems not only appropriate but also necessary in order to evaluate the applicant's financial responsibility, operational, legal and regulatory capabilities, experience and competence; and (ii) such information may include, without limitation, documented risk management practices, liquidity stress tests, credit agreements, risk assessments, opinions of counsel and other independent professionals, audited financial statements (including, without limitation, those of the applicant's Affiliates and/or Guarantor), consolidated and consolidating financial statements, financial projections, and organizational documents and charts (including, but not limited to, certificates of incumbency and the corporate structure of the applicant's Affiliates and/or Guarantor). Although already implicit in the Rules, clarifying this requirement would provide greater notice and transparency to applicants.

- Clarify that if FICC determines to apply a limitation or restriction on an applicant in lieu of applying a membership standard, as FICC is currently authorized to do, that such limitations and restrictions also include conditions and, in addition to the examples already provided in the Rules, such limitations, restrictions, and conditions also may include increased or adjusted ongoing membership financial requirements or an ongoing requirement to provide additional information or reports to FICC. Although already implicit in the Rules, clarifying this requirement would provide greater notice and transparency to applicants.

- Clearly authorize FICC to deny membership to an applicant if FICC becomes aware of any factor or circumstance about the applicant or its Controlling Management that may impact the suitability of the applicant as a Member, such as, without limitation, (i) if the applicant would be placed on the Watch List upon admission; (ii) concerns relating to compliance with anti-money laundering or sanctions laws, rules, and regulations; (iii) concerns relating to the amount or degree of leverage maintained or proposed to be maintained by the applicant; and/or (iv) pending, adjudicated or settled regulatory or other legal actions involving the applicant or its management, including the applicant being subject to a Statutory Disqualification, as such term is defined in Rule 1. Although already implicit in the Rules, explicitly stating

this authority would provide greater notice and transparency to applicants.

- If an applicant is denied membership, restrict the applicant from reapplying for membership until the applicant has demonstrated to the satisfaction of FICC that the applicant has adequately addressed the specific grounds upon which the application was denied. This change would help stop an applicant from immediately reapplying for membership and tying up FICC resources without first taking the time to address the underlying issue for the denial.

Second, FICC proposes to make several changes to Rule 3, which addresses ongoing membership requirements. In addition to various technical, ministerial, and other conforming and clarifying changes, FICC proposes the following changes to Rule 3:

- Expand the requirement that information provided to FICC under the Rules must be in English and move the requirement into Section 1 of Rule 3. Currently the requirement that information provided to FICC must be in English is at the end of Section 2 of Rule 3 and only applies to information that is provided to FICC under Rule 3. The proposed change would move this statement into Section 1, which addresses ongoing membership requirements generally, and would expand the requirement to apply to all information provided under the Rules.

- Update the type of financial information that FICC may, in its discretion, request from a Member's Affiliate and not just the Member's parent, including Affiliates of Members that are a Broker or Dealer, U.S. bank or trust company, Futures Commission Merchant, or non-U.S. organized entity, to include the annual audited Financial Statements for the applicable fiscal year, certified by an independent certified public accountant and prepared in accordance with generally accepted accounting principles, of the Affiliate, and if annual audited Financial Statements are not available, allow FICC, in its discretion, to accept unaudited Financial Statements, audited consolidated Financial Statements, or other financial information of the entity, as applicable.

- Require Members to provide accurate, complete and timely responses to FICC's annual and periodic due diligence information requests, which could include, for example, the delivery of additional reports and other information. Although already implicit in the Rules, explicitly stating this requirement would provide greater notice and transparency to Members.

- Subject Members to (i) a fine, pursuant to the Fine Schedule; (ii) require adequate assurances of their financial responsibility and operational capability as provided for in Section 7 of Rule 3; and/or (iii) if the requested information is outstanding for more than 60 calendar days and until such time that the information is received by FICC to FICC's satisfaction, a Credit Compliance Charge, calculated pursuant to the Margin Component Schedule, added to the Required Fund Deposit of such Member, if the Member fails to provide accurate, complete and timely information, including responses to due diligence requests, in the manner requested. Although already subject to fines for failing to timely provide financial and related information, expanding such fines to explicitly include failing to respond to other information requests, particularly due diligence requests, and adding the ability to assess adequate assurances or a Credit Compliance Charge, would further support the importance of Members providing timely responses to requests for key information.

- Clarify the timing and manner in which Members must notify FICC if a Member is no longer in compliance with applicable membership standards or is the subject of an investigation or proceeding, including the Member's Controlling Management, that would cause it to no longer meet an applicable membership standard, and that failure to provide such notification shall subject the Member to a fine. Although already implicit in the Rules, clarifying this requirement would provide greater notice and transparency to Members.

- Authorize FICC to require Funds-Only Settling Bank Members to provide adequate assurances that could limit the number of Netting Members for which the Funds-Only Settling Bank Member provides settlement services. Given the significant risk that Funds-Only Settling Bank Members present to FICC and Netting Members in settling for Netting Members, it is imperative that FICC be able to adequately mitigate that risk exposure, when needed, by limiting the number of Netting Members for which such a bank can settle, when FICC deems such measure necessary to mitigate risk presented by the Funds-Only Settling Bank Member.

- Clarify that the ongoing monitoring of Members includes, without limitation, monitoring through annual and periodic due diligence requests. Although already implicit in the Rules, clarifying this requirement would provide greater notice and transparency to Members.

Third, FICC proposes to make several changes to the Fine Schedule. In addition to various technical, ministerial, and other conforming and clarifying changes to the Fine Schedule, FICC proposes the following changes:

- Replace the "Financial Reports" fine category and associated fines with a new category titled "Reports, Information and Due Diligence Requests," where the first, second, third, and fourth occasions for failing to timely provide such information would result in \$5,000, \$10,000, \$15,000, and \$20,000 fines, respectively, and provide that for more than four occasions, fines will be determined by FICC with the concurrence of the Board of Directors. FICC believes that providing a broader fine category, with higher fines, would help improve Member's compliance with the obligation.

- Provide notice that (i) the fine for failure to deliver timely and accurate responses to due diligence requests, in the form required by FICC, would be assessed on the 31st Business Day following the day on which such responses are due; (ii) the fine for failure to deliver all other information would be assessed on the Business Day following the day on which such information is due; and (iii) in all cases, the applicable fine shall be assessed every 10 Business Days and shall increase by \$5,000 each time it is assessed, as shown in the Fine Schedule, until such responses have been delivered to FICC. Providing better notice of when the fines will be assessed, and applying a continuing, meaningful fine for a Member's ongoing failure to comply, would help improve compliance with the obligation.

4. Other Revisions and Clarifications to the Rules

Finally, the proposed rule changes would make other revisions to clarify and conform provisions of the Rules to improve their accuracy and transparency.

First, the proposed rule changes would revise and clarify certain defined terms in Rule 1. The revisions would update the definition of "Affiliate" to replace a citation to a particular regulatory definition of this term set forth in rules promulgated under the Act, with the text of the particular regulatory definition of this term.³⁰ This revision would not change the meaning of this term as it is used in the Rules, but would provide further clarity by including the actual definition and not

requiring a reader to find that definition in the cited regulation.

The proposed rule changes would also update the definition of "Designated Examining Authority" to include the appropriate regulatory bodies that may apply to other legal entity types and to permit FICC to choose the applicable regulatory body when a Member has multiple overseeing regulators. The additional regulatory authorities that would be included in this defined term are already listed along with the term Designated Examining Authority in Section 6 of Rule 3. Expanding the defined term to include these additional regulatory agencies in the defined term would allow FICC to remove that additional language from Rule 3 and simplify the uses of this term in other places in the Rules, including in Sections 2 and 3 of proposed Rule 5 regarding the monitoring and enforcement of the trade submission requirement.

The proposed rule changes would also update the defined term for "Eligible Treasury Security" to clarify the meaning of this term by using the new proposed defined term for "U.S. Treasury Security" and the existing defined term for "Eligible Security".

Second, the proposed rule changes would reorganize the sections within Rules 2A and 3, regarding the initial and ongoing requirements of membership, to identify similar requirements together in the same sections and ensure members have a clear understanding of these obligations. In Rule 2A, these proposed changes would include adding subheadings to Section 5, which describes the various documents and other application requirements, to improve the transparency of this section and better identify these requirements to the reader.

These proposed changes would also rename Section 1 of Rule 3 "General" and move general statements that are applicable to the provisions of both Rule 3 and the Rules generally into this section. For example, Section 1 of Rule 3 would now include a statement that clarifies for Members which requirements apply when a firm qualifies for multiple types of Netting Member and would include and expand the requirement that information provided to FICC under the Rules generally must be in English, as discussed above.

The proposed changes to Rule 3 would also rename Section 2 "Financial Statements, Regulatory Reports and Other Reporting Requirements", create subheadings to more clearly describe the types of information and reports that Netting Members must provide on an

³⁰ 17 CFR 230.405.

ongoing basis, and move other ongoing reporting requirements into new Section 2(i). For example, Section 2(i) would include an existing ongoing requirement to provide regulatory reports that are submitted to a Member's regulatory supervisors and other authorities. The proposed changes would move all statements in Rule 3 regarding the timing of ongoing membership reporting requirements into a new Section 2(ii). The definition of "Financial Statements" would be moved out of Section 3 of Rule 3 and into Rule 1, with the other defined terms. The ongoing requirement that Members maintain a current Legal Entity Identifier would be moved into Section 3 of Rule 3.

The proposed changes to Rule 3 would also move the existing requirement that Members maintain or upgrade their systems into Section 6 of Rule 3, where other operational requirements are currently described. The proposed changes would add new subheadings to Section 7 of Rule 3, which describes the general continuance standards for membership, to make these standards easier to identify. The proposed changes would simplify the description of the requirement to notify FICC of events that impact a Member's compliance with applicable ongoing membership requirements in new Section 7(a) of Rule 3, and to specify that failure to provide this notification will result in a fine pursuant to the Fine Schedule. These proposed changes would not change Members' notification obligations or impose new disciplinary measures but would improve the clarity of these requirements in the Rules.

The proposed changes would move the description of the requirement that Netting Members that are Foreign Persons notify FICC if they become subject to disciplinary action by their home regulator to Section 9 of Rule 3, which already addresses the ongoing requirement that Members comply with applicable laws. Finally, the proposed changes would move the statement that a Netting Member may be required to provide FICC with a legal opinion if FICC determines that the Member could be subject to "Legal Risk" (as such term is defined in the Rules) to Section 11 of Rule 3, which already addresses FICC's ongoing monitoring of Members.

As noted above, these proposed changes are not intended to alter the requirements of Members or rights of FICC with respect to ongoing membership standards, but would rearrange, clarify and simplify the descriptions in Rule 3 to improve the transparency of those provisions.

Third, the proposed rule changes would move descriptions of the ongoing and regular attestation, acknowledgement and certification requirements into new Section 2(iii) of Rule 3 and would amend the Fine Schedule to adopt fines that would be assessed for a failure to deliver such attestations when required. The attestations that would be included in this new subsection are (1) an existing requirement that Bank Netting Members that are Foreign Persons provide an attestation on at least an annual basis regarding their capital requirements and capital ratios, which is currently described in Rule 3; (2) the existing requirement that Netting Members, Sponsoring Members and CCIT Members deliver a "Cybersecurity Confirmation" (as such term is defined in Rule 1) at least every two years, as currently described in Section 2 of Rule 3; (3) the proposed Annual Trade Submission Attestation and the proposed Triennial Independent Trade Submission Review and Report requirements that are proposed to be added to new Rule 5, as described above; and (4) the existing requirement that Netting Members provide an annual attestation and periodic acknowledgements regarding their obligations under the Capped Contingency Liquidity Facility ("CCLF", as such term is defined in the Rules) pursuant to Rule 22A, which is currently described in Rule 22A.³¹

In connection with these proposed changes, FICC would delete the definition of "Required Attestation", which currently refers to the attestation regarding a Netting Member's CCLF obligations and replace that definition with a defined term for "CCLF Attestation" in Rule 1, to better reflect the nature of this required attestation. FICC would also amend Rule 22A to remove the descriptions of the CCLF attestation and acknowledgement requirements and replace those descriptions with a reference to Rule 3.

FICC would also specify in the Fine Schedule the applicable fines for a failure to provide the attestations that would be identified in Section 2(iii) of Rule 3. While FICC has the authority under Rule 48 to take disciplinary action, including imposing a fine, if a Netting Member violates any provision

of the Rules, the proposed change to specify the applicable fines for failure to deliver the Cybersecurity Confirmation and the CCLF attestation and acknowledgements would improve the transparency of the Rules and permit Members to better anticipate the consequences of failing to comply with these requirements.

Finally, the proposed rule changes would amend Sections 4(b)(iii) and 6 of Rule 2A and Section 5 of Rule 3 to remove references to FICC's Board of Directors as being responsible for approving or authorizing certain actions and replacing such references with references to FICC. As provided in Rule 44, action by FICC may include action by the Board or by another authorized person as may be designated by the Board from time to time. This proposed change would permit the Board to either retain the authority to take the actions specified in these sections of the Rules or to authorize management of FICC to do so, consistent with Rule 44 and the Board's authority under the FICC By-laws. Specifically, the Board's authority to empower management with certain responsibilities originates in the FICC By-laws, which have been filed as a Rule of FICC.³² The By-laws document the responsibilities of the Board in electing and appointing officers of FICC, and prescribing and assigning to those officers their respective powers, authority and duties.³³ This revision would simplify these statements in the Rules, consistent with Rule 44.

Implementation Timeframe

Subject to approval by the Commission, FICC expects to implement the proposal by no later than March 31, 2025, and would announce the effective date of the proposed rule change by an Important Notice posted to FICC's website.

As provided for in the Treasury Clearing Rules, while the Rules would be updated to reflect the changes proposed by this filing by no later than March 31, 2025, Netting Members would not be obligated to comply with the trade submission requirement proposed by this filing until December 31, 2025, with respect to Buy/Sell Transactions that are considered Eligible Secondary Market Transactions, and June 30, 2026, with respect to Treasury Repo Transactions that are considered Eligible Secondary Market Transactions.

³¹ FICC recently proposed changes to the Rules to require that each Netting Member provide certain acknowledgements to FICC concerning their understanding of and ability to meet their CCLF obligations. See Securities Exchange Act Release No. 100137 (May 14, 2024), 89 FR 43938 (May 20, 2024) (SR-FICC-2024-008). The changes proposed herein would move the separately proposed disclosures of those acknowledgements from Rule 22A to Rule 3.

³² See Securities Exchange Act Release Nos. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR-DTC-2006-10, SR-FICC-2006-09, and SR-NSCC-2006-08); 82917 (Mar. 20, 2018) 83 FR 12982 (Mar. 26, 2018) (SR-FICC-2018-002).

³³ See Sections 3.2 through 3.9, *id.*

2. Statutory Basis

FICC believes the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) and (G) of the Act,³⁴ and Rules 17ad-22(e)(18)(ii), (iii), (iv)(A) and (B), and (e)(23)(ii), each promulgated under the Act,³⁵ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.³⁶

The proposed rule changes to require that each Netting Member submit to FICC for Novation all Eligible Secondary Market Transactions to which it is a counterparty would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act, by ensuring that such transactions are subject to the risk mitigation benefits of central clearing at FICC. Such benefits are described by the Commission in the Adopting Release and include, for example, (1) reduction in overall counterparty credit risk when FICC Novates such transactions, becoming a counterparty to each transaction, as the buyer to every seller and the seller to every buyer; (2) enhancing the efficiency of, and market confidence in, centralized default management at FICC if a Netting Member defaults; and (3) increasing multilateral netting of these transactions, thereby reducing operational and other risks associated with such transactions.³⁷ By implementing the trade submission requirement and adopting provisions to monitor and enforce Members' compliance with that requirement, as required by the Treasury Clearing Rules, the proposal would extend the benefits of central clearing to all Eligible Secondary Market Transactions and, thereby, promote the prompt and accurate clearance and settlement of securities transactions, as recognized by the Adopting Release. In this way, the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act.³⁸

As described above, FICC proposes changes that would enhance GSD's initial and ongoing membership standards provided under Rules 2A and 3, respectively. In particular, for Rule 2A, FICC proposes to, in summary, (i) explicitly require adequate liquidity through adequate resources; (ii) when an applicant or Member relies on a Guarantor, permit FICC to engage external counsel, at the applicant or Member's expense, to review the guaranty provided, and require the Guarantor to provide FICC with information FICC deems necessary or appropriate in assessing the guaranty; (iii) clarify that FICC considers "business history" to encompass more broadly the "operating and management history and outlook" of the applicant, and require that an applicant have at least one year of such history and outlook, or, absent one year, permit FICC instead of its Board, to determine whether the applicant has personnel with sufficient operational and financial background and experience; (iv) require applicants to provide FICC with a business plan, which FICC may require to be assessed by a third-party at the participant's expense, that, in FICC's judgement, demonstrates the applicant's ability to meet its requirements to FICC; (v) explicitly state that FICC can deny an application if the applicant does not have adequate personnel in key senior management roles; (vi) clarify what information FICC may require an applicant, or the applicant's Affiliates or Guarantor, to provide FICC; (vii) clarify that in addition to limitations and restrictions, conditions may also be placed on an applicant, and provide further examples of such; (viii) clearly authorize FICC to deny an applicant's membership under certain additional circumstances, and if membership is denied under any circumstance, not permit reapplication until the applicant has adequately addressed the reason for the denial, to FICC's satisfaction.

Also as described above, for Rule 3, FICC proposes to, in summary, (i) require Affiliates of a Member to provide FICC, at FICC's discretion, certain financial statements; (ii) explicitly state that Members are required to provide accurate, complete and timely responses to FICC's annual and periodic due diligence information requests, which are used for ongoing monitoring of a Member, and that failure to do so could subject the Member to fines, adequate assurances, or a Credit Compliance Charge; (iii) clarify the time and manner in which a Member must notify FICC if the Member breaches its GSD membership

standards, or whether it or its Controlling Management are the subject of an investigation or proceeding that may cause the Member to breach its membership standards; and (iv) include an adequate assurances condition on Funds-Only Settling Bank Members that could limit the number of Netting Members for which the bank provides settlement services.

Finally, as described above, FICC also proposes to update the Fine Schedule by replacing the current "Financial Reports" category and associated fines with a new "Reports, Information and Due Diligence Requests" category, which would include more meaningful fine amounts, as well as notices regarding when fines would be charged and what continuing fines would be levied if the Member does not provide the outstanding information.

FICC believes these proposed enhancements to GSD's membership standards would clarify, streamline, and improve FICC's ability to assess and manage applicants and Members, as applicable. FICC also believes the level of detail and clarity offered by the proposed changes provides greater transparency and notice to all applicants and Members that are or would be subject to Rules 2A and 3. By enhancing the authority and tools available to FICC to assess and manage applicants and Members, FICC would better position itself to identify and mitigate the credit risk presented to it and, thus, promote the safety and soundness of FICC, its Members, and the industry it serves, all of which helps assure the safeguarding of securities and funds in the custody or control of FICC, consistent with Section 17A(b)(3)(F) of the Act.³⁹

Section 17A(b)(3)(G) of the Act requires that the rules of FICC provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.⁴⁰ The proposed rule changes would adopt measures in Rule 5 and in the Fine Schedule to address a failure to comply with the trade submission requirement. Under these provisions, FICC would impose a continuing fine and notification to the applicable Netting Members' Designated Examining Authority or Appropriate Regulatory Agency and to the Commission. The disciplinary action would be clearly described in Rule 5 and the proposed

³⁴ 15 U.S.C. 78q-1(b)(3)(F) and (G).

³⁵ 17 CFR 240.17ad-22(e)(18)(ii), (iii), (e)(18)(iv)(A) and (B), and (e)(23)(ii).

³⁶ 15 U.S.C. 78q-1(b)(3)(F).

³⁷ See *supra* note 4, at 14-18.

³⁸ 15 U.S.C. 78q-1(b)(3)(F).

³⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁰ 15 U.S.C. 78q-1(b)(3)(G).

fine amounts would be set forth in the Fine Schedule. FICC is also proposing to adopt a cure period of 10 Business Days before it takes disciplinary measures if a Netting Member self-reports a failure to comply with the requirement. FICC believes these measures, including the cure period that would be available to Members who self-report a failure to comply with the trades submission requirements, are appropriate deterrents to non-compliance and are consistent with the requirements of Section 17A(b)(3)(G).⁴¹

Additionally, the proposed rule changes would define a broader category for fines applicable when a Netting Member fails to timely submit required reports, information and responses to due diligence requests, and would increase the applicable fines. The proposed fine amounts were determined in consideration of, and in alignment with, the other existing fines applicable. The proposed rule changes are designed to apply meaningful and appropriate disciplinary action that would signal to Netting Members the criticality of these risk management requirements. As such, the proposed rule changes are also consistent with the requirements of Section 17A(b)(3)(G).⁴²

Rule 17ad–22(e)(18)(ii) and (iii) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which . . . (ii) require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and (iii) monitor compliance with such participation requirements on an ongoing basis.⁴³

As described above, FICC proposes several changes to GSD's initial and ongoing membership requirements under Rules 2A and 3. FICC believes each of those proposed changes is objective, risk-based, and, of course, would be publicly disclosed as part of the Rules. FICC also believes the proposed changes support fair and open access to GSD services, as the proposed changes are agnostic to any individual or group of applicants or Members but, instead, are simply designed to clarify and strengthen GSD's current membership standards. Additionally, with respect to the specific proposed changes to (i) enhance FICC's ability to consider, assess, and require adequate liquidity of an applicant or Member; (ii)

require applicants to have personnel with adequate experience and background; and (iii) explicitly require responses to due diligence requests, which are a key tool to assessing a Member's credit risk, FICC believes that those changes would help ensure that applicants and Members have sufficient financial resources and robust operational capacity to meet their obligations to FICC. For those reasons, FICC believes the proposed changes are consistent with Rule 17ad–22(e)(18)(ii) and (iii) under the Act.⁴⁴

Rule 17ad–22(e)(18)(iv)(A) under the Act requires, among other things, that FICC, as a covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities, require that any direct participant of such covered clearing agency submit for clearance and settlement all of the eligible secondary market transactions to which such direct participant is a counterparty.⁴⁵ The proposed rule changes would adopt a requirement that all Netting Members submit to FICC for clearing and settlement all Eligible Secondary Market Transactions to which they are a party, and would adopt the definition of Eligible Secondary Market Transactions and other related terms from the Treasury Clearing Rules in defining the scope of this requirement. The proposed changes to adopt this requirement, and related defined terms, into Rules 1 and 5 would directly comply, and, therefore, be consistent, with the requirements of Rule 17ad–22(e)(18)(iv)(A).⁴⁶

Rule 17ad–22(e)(18)(iv)(B) under the Act requires, among other things, that FICC, as a covered clearing agency that provides central counterparty services for transactions in U.S. Treasury securities, identify and monitor its direct participants' submission of transactions for clearing as required by Rule 17ad–22(e)(18)(iv)(A), including how FICC would address a failure to submit transactions in accordance with Rule 17ad–22(e)(18)(iv)(A).⁴⁷ FICC is proposing to adopt provisions that would specify its authority to request information and inspect its Netting Members' books and records in connection with monitoring their compliance with the trade submission requirement. FICC is also proposing to adopt ongoing membership requirements that would require each Netting Member to (1) report to FICC if the Netting Member is not in compliance with the trade submission

requirement; (2) deliver an annual attestation regarding its ongoing compliance with the trade submission requirement; (3) conduct an independent review of its ongoing compliance with the trade submission requirements on a triennial basis; and (4) submit a report of that review to its senior most governing body and FICC. As discussed above, FICC believes it is appropriate to identify and monitor Netting Members' submission of transactions for clearing by adopting both provisions that Netting Members take specific affirmative actions to review their compliance and affirm such compliance to FICC, and provisions that specify FICC's own authority to inspect and verify such compliance. Collectively, these provisions provide a comprehensive framework for identifying and monitoring compliance with the trade submission requirements and are consistent with the requirements of Rule 17ad–22(e)(18)(iv)(B).⁴⁸

FICC is also proposing to adopt measures in Rule 5 to specify how FICC would address a failure to comply with the trade submission requirement. Under these provisions, FICC would impose a continuing fine and notification to the applicable Netting Members' Designated Examining Authority or Appropriate Regulatory Agency and to the Commission. FICC is also proposing to adopt a cure period of 10 Business Days before it takes disciplinary measures if a Netting Member self-reports a failure to comply with the requirement. FICC believes these measures, including the cure period, are appropriate deterrents to non-compliance and are consistent with the requirements of Rule 17ad–22(e)(18)(iv)(B).⁴⁹

Rule 17ad–22(e)(23)(ii) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC.⁵⁰ As described above, FICC is proposing a number of clarifications and revisions to the Rules that do not create new rights or obligations, but are designed instead to improve the clarity and transparency of the Rules. For example, by reorganizing the sections of Rule 3, which addresses the ongoing membership requirements, these proposed changes create clearer disclosures and improve Netting

⁴¹ *Id.*

⁴² *Id.*

⁴³ 17 CFR 240.17ad–22(e)(18)(ii) and (iii).

⁴⁴ *Id.*

⁴⁵ 17 CFR 240.17ad–22(e)(18)(iv)(A).

⁴⁶ *Id.*

⁴⁷ 17 CFR 240.17ad–22(e)(18)(iv)(B).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 17 CFR 240.17ad–22(e)(23)(ii).

Members' ability to identify and evaluate the material costs they incur by participating in membership. Similarly, by moving all of the required attestations, certifications and acknowledgments that are required of Members on regular and ongoing basis into one section within Rule 3, these proposed changes make the Rules easier to read and understand. In this way, the proposed changes that are designed to clarify and conform provisions of the Rules are consistent with the requirements of Rule 17ad–22(e)(23)(ii).⁵¹

(B) Clearing Agency's Statement on Burden on Competition

The proposed rule changes to adopt a trade submission requirement and define the scope of that requirement by adopting definitions from the Treasury Clearing Rules could impose a burden on competition. Specifically, Netting Members that are subject to the trade submission requirement may incur additional costs related to submitting those transactions to FICC for central clearing, such as applicable clearing fees and risk management charges. These costs could burden Netting Members that have lower operating margins or higher costs of capital than other Netting Members or market participants. However, FICC believes that any burden on competition would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.⁵²

First, as described above, the proposed rule changes to adopt a trade submission requirement would be necessary in furtherance of the Act. By subjecting Eligible Secondary Market Transactions to the risk mitigation benefits of central clearing at FICC, including reducing overall counterparty credit risk, enhancing the efficiency of, and market confidence in, centralized default management at FICC if a Netting Member defaults, and increasing multilateral netting of these transactions, the proposed trade submission requirement would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.⁵³

As described above, the proposed trade submission requirement that would be adopted in Rule 5 and the proposed scope of transactions that are subject to that requirement that would be adopted through the definition of "Eligible Secondary Securities

Transactions" as such term is defined in the Exchange Act are necessary in furtherance of Rule 17ad–22(e)(18)(iv)(A) under the Act.⁵⁴ The proposed measures that address how FICC would identify and monitor Netting Members' compliance with the trade submission requirement and how FICC would address a failure to submit transactions in compliance with the trade submission requirement are also necessary in furtherance of Rule 17ad–22(e)(18)(iv)(B) under the Act.⁵⁵

Second, FICC believes the proposed changes are appropriate in furtherance of the Act. Specifically, the proposed trade submission requirement would apply equally to all Netting Members, without any distinction between Members that are different legal entities or have different locations of incorporation, organizational structure or sizes. Under the proposed rules, which are being adopted to comply with the requirements of Rule 17ad–22(e)(18)(iv)(A), all Netting Members would be subject to the same obligation to submit Eligible Secondary Market Transactions to which they are a counterparty to FICC for clearing and settlement.⁵⁶

Similarly, the ongoing reporting requirement, Annual Trade Submission Attestation, Triennial Independent Trade Submission Review and Triennial Independent Trade Submission Report, proposed to comply with the requirements of Rule 17ad–22(e)(18)(iv)(B), would apply to all Netting Members equally, without distinction.⁵⁷ FICC is proposing to provide Netting Members with some flexibility in how they conduct the Triennial Independent Trade Submission Review by permitting them to either engage an internal independent group or an external independent third party to conduct the review. By providing this flexibility, the proposed rules acknowledge that Netting Members may have different organizational structures and internal capabilities, but would continue to apply the same ongoing monitoring and attestation obligations on all Members. Similarly, the fines and regulatory reporting measures that FICC is proposing to adopt to address non-compliance with the trade submission requirement, would apply equally to all Netting Members. Finally, FICC is also proposing to adopt a cure period to incentivize Netting Members to self-report any non-compliance with the

requirement. In these ways, FICC believes the proposed rule changes are appropriate and designed in a way to minimize the impact the proposal could have on competition.

Therefore, while the proposed rule changes may cause some burden on competition, FICC believes that the proposed rule changes are necessary and appropriate in furtherance of the purposes of the Act.

FICC believes that some of the proposed enhancements to GSD's initial and ongoing membership standards under Rules 2A and 3 could impact competition and that impact could be a burden: (i) authorizing FICC, at its discretion, the option to engage external legal counsel to review the validity and enforceability of a Guarantor's guaranty, with the costs and expenses of such review being borne by the GSD applicant or Member; (ii) requiring an assessment of an applicant's business plan, by an independent third-party consultant, at the expense of the applicant, to assess the reasonableness and viability of the applicant's business plan, including its assumptions and projections; (iii) extending the required operating history of a GSD applicant from six months to one year; (iv) subjecting Members to increased fines, adequate assurances, or a risk management charge for failing to provide FICC requested information; and (v) authorizing FICC the option to apply an adequate assurances condition on Funds-Only Settling Bank Members that could limit the number of Netting Members for which the bank provides settlement services.

FICC believes that requiring GSD applicants and Members to bear the cost of external legal counsel that FICC would have the option to engage to review the validity and enforceability of a Guarantor's guaranty could impose a burden on competition on such applicants and Members because they could now be required to expend financial resources on something that they currently may not be required to do. Similarly, requiring an applicant to bear the cost of an independent third-party consultant to assess the reasonableness and viability of the applicant's business plan could impose a burden on competition for the same reason. However, in both circumstances, FICC does not believe the burden would be significant because FICC does not anticipate that these new authorities would be exercised often, nor does FICC believe the costs would be ongoing or extensive in consideration of the amount of funds it takes to engage in the securities industry as a FICC participant. Moreover, FICC believes

⁵¹ *Id.*

⁵² 15 U.S.C. 78q–1(b)(3)(I).

⁵³ 15 U.S.C. 78q–1(b)(3)(F).

⁵⁴ 17 CFR 240.17ad–22(e)(18)(iv)(A).

⁵⁵ 17 CFR 240.17ad–22(e)(18)(iv)(B).

⁵⁶ 17 CFR 240.17ad–22(e)(18)(iv)(A).

⁵⁷ 17 CFR 240.17ad–22(e)(18)(iv)(B).

that these costs are likely avoidable where the guaranty or business plan is sound, clear, complete, and leaves little open to question.

FICC believes that extending the required operating history of a GSD applicant from six months to one year could cause a burden on competition because the applicant's competitive position may rest on its FICC membership. The significance of this potential burden would likely depend on the facts and circumstances of each individual applicant. However, FICC notes that it offers access to GSD services through its Sponsored Members service,⁵⁸ that one year of operating history is still not a long period, and that FICC maintains the option to alternatively consider, at FICC's discretion, whether the applicant has personnel with sufficient operational and financial background and experience if the one-year operating history is not yet met.

FICC believes that subjecting Members to increased fines, adequate assurances, or a risk management charge for failing to provide FICC requested information may cause a burden on competition because funds paid to or held by FICC means fewer financial resources available to the Member for, possibly, competitive engagement. However, FICC does not believe the burden would be significant because whether a Member is subject to such charges would be within the control of the Member and avoidable if the Member simply provides the information requested by FICC in a timely and complete manner.

Finally, FICC believes that providing it the option to subject a Funds-Only Settling Bank Member to an adequate assurances condition that limits the number of Netting Members for which the bank provides settlement services could cause a burden on competition for that Member because it could limit the bank's business. However, FICC does not believe such burden would be significant because FICC does not anticipate exercising this authority often, and the circumstance in which such a bank would be subject to such a condition is likely within the control of the bank (*i.e.*, FICC would not be exercising this authority but for addressing a risk presented by the bank that the bank could likely control).

Regardless of their significance, FICC believes that the potential competitive burdens of these proposed changes are necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I)

thereof.⁵⁹ More specifically, FICC believes these proposed changes are necessary and appropriate in furtherance of Section 17A(b)(3)(F) of the Act⁶⁰ and Rule 17ad-22(e)(18)(ii) and (iii) promulgated thereunder.⁶¹

First, FICC believes the proposed changes that could cause a burden on competition discussed above (*i.e.*, independent review of a guaranty at the applicant or Member's cost; independent assessment of an applicant's business plan at the applicant's cost; extending the operating history requirement to one year; increasing and adding charges for failure to provide complete and timely information; and providing the option for an adequate assurance condition that could limit the number of Netting Member clients at a Funds-Only Settling Bank) are necessary in furtherance of Section 17A(b)(3)(F) of the Act⁶² because they would improve FICC's ability to assess and manage applicants and Members, as applicable, to help ensure they can or will be able to meet their obligations to FICC and, to the extent Members are not providing FICC with needed information or certain settling bank Members are presenting a unique risk, the proposed changes would provide enhanced charges and assurances to help incentivize Members and protect FICC. By furthering FICC's ability to assess, manage, incentivize, and seek assurances of its applicants and Members, as applicable, the proposed changes are necessary to improve FICC's ability to assure the safeguarding of safeguarding of securities and funds which are in its custody or control or for which it is responsible, as required under Section 17A(b)(3)(F) of the Act, as cited above.

FICC also believes those proposed changes are necessary in furtherance of Rule 17ad-22(e)(18)(ii) and (iii) under the Act.⁶³ As required by Rule 17ad-22(e)(18)(ii) and (iii), those proposed changes are reasonably designed to help ensure that (A) applicants and Members, as applicable, have sufficient financial resources and robust operational capacity to meet the obligations arising from participation in FICC, and (B) FICC has more meaningful tools to help ensure compliance with its Rules, all of which is in furtherance of and consistent with Rule 17ad-22(e)(18)(ii) and (iii) under the Act, as cited above.

Second, FICC believes those proposed changes are appropriate in furtherance

of both Section 17A(b)(3)(F) of the Act⁶⁴ and Rule 17ad-22(e)(18)(ii) and (iii)⁶⁵ promulgated thereunder because the changes are reasonably tailored, objective, risk-based, and agnostic in their application to applicants and Members, as applicable. In fact, FICC believes the potential burdens discussed above are, essentially, within the control of the applicant or Member, as applicable. For example, if the subject guaranty or business plan is sound, clear, complete, and leaves little open to question, then it is highly unlikely that the applicant or Member would incur the additional cost of an independent assessment. Similarly, if the applicant has personnel with sufficient operational and financial background and experience, then it may not need a year's worth of operating history. Finally, if the subject Member simply provides the information requested by FICC in a timely and complete manner, or the Funds-Only Settling Bank Member mitigates the risk at issue from its side, then the corresponding charges and assurances proposed would not likely be imposed. For these reasons, FICC believes those proposed changes are appropriate in furtherance of and consistent with Section 17A(b)(3)(F) of the Act and Rule 17ad-22(e)(18)(ii) and (iii) under the Act, as each are cited above.

FICC does not believe the proposal to make technical corrections and other clarification changes to the Rules would impact competition. These changes are being proposed to ensure the clarity and accuracy of the Rules. They would not change FICC's current practices or affect Members' rights and obligations. As such, FICC believes those changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only

⁵⁹ 15 U.S.C. 78q-1(b)(3)(I).

⁶⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁶¹ 17 CFR 240.17ad-22(e)(18)(ii) and (iii).

⁶² 15 U.S.C. 78q-1(b)(3)(F).

⁶³ 17 CFR 240.17ad-22(e)(18)(ii) and (iii).

⁶⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁶⁵ 17 CFR 240.17ad-22(e)(18)(ii) and (iii).

⁵⁸ See Rule 3A, *supra* note 3.

information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at www.sec.gov/regulatory-actions/how-to-submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

FICC reserves the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FICC-2024-009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR-FICC-2024-009. 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 FICC and on DTCC's website (dtcc.com/legal/sec-rule-filings). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FICC-2024-009 and should be submitted on or before July 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁶

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14378 Filed 6-28-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100425; File No. SR-NYSENAT-2024-20]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

June 25, 2024.

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 June 12, 2024, NYSE National, Inc. ("NYSE National" 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 amend the Connectivity Fee Schedule ("Fee Schedule") regarding colocation services and fees to provide Users with wireless connectivity to additional market data feeds. 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 Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to additional market data feeds.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the "Existing Third Party Data"), and wired

⁴ For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR-NYSENAT-2018-07). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-37, SR-NYSEAMER-2024-40, SR-NYSEARCA-2024-54, and SR-NYSECHX-2024-24.

⁶⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections (“Connectivity”) to four additional market data feeds (together, the “Proposed Third Party Data”):

- MIAX Pearl Equities Depth of Market Feed (“MIAX DoM”),⁶
- Nasdaq BX TotalView–ITCH FPGA,⁷
- Nasdaq PSX TotalView, and
- Nasdaq PSX TotalView–ITCH FPGA.⁸

As with most other Existing Third Party Data,⁹ the monthly charge for Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is applicable to Connectivity to the Proposed Third Party Data.

Users would be offered Connectivity to Proposed Third Party Data through connections into the colocation center

in the Mahwah, New Jersey data center (“MDC”).¹⁰

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative during 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

The Exchange proposes to add the following to the Fee Schedule to reflect fees for Connectivity to Proposed Third Party Data:

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data.	Wireless connection of MIAX Pearl Equities Depth of Market Feed (DoM) data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq BX TotalView–ITCH FPGA data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq PSX TotalView data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq PSX TotalView–ITCH FPGA data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

Each proposed Connectivity service would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (“Single Port Third Party Data”), it would not receive an additional port for the Proposed Third Party Data, as one would not be needed.¹¹ Rather, the User would be able to connect to Proposed Third Party Data using the same port that it already had, as a User would only require one port to connect to the Proposed Third Party Data and Single Port Third Party

Data, irrespective of how many of the wireless connections it orders.

To receive a market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content. If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Connectivity to Proposed Third Party Data was requested by Users, but the Exchange believes that it would obtain less than a handful of new customers due to the proposed change.

⁵ See Securities Exchange Act Release No. 99810 (March 20, 2024), 89 FR 21050 (March 26, 2024) (SR–NYSENAT–2024–09).

⁶ As described by MIAX PEARL, LCC, “[t]he [MIAX] DoM feed is a data feed that contains the displayed price and size of each order entered on MIAX PEARL Equities, as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages.” Securities Exchange Act Release No. 91073 (February 5, 2021), 86 FR 9096, 9100 (February 11, 2021) (SR–PEARL–2021–02).

⁷ The difference between the Nasdaq BX TotalView feed and the Nasdaq BX TotalView–ITCH feed, which is part of the Existing Third Party Data, is the delivery mechanism: the data is the same. As described by Nasdaq BX, Inc., “BX TotalView is a real-time market data product that provides full order depth using a series of order messages to track the life of customer orders in the

BX market, as well as trade data for BX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages.” Securities Exchange Act Release No. 98158 (August 17, 2023), 88 FR 57505 (August 23, 2023) (SR–BX–2023–020), at 57506.

⁸ According to Nasdaq PHLX LLC, “PSX TotalView is a real-time market data product that provides full order depth using a series of order messages to track the life of customer orders in the PSX market, as well as trade data for PSX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages.” Securities Exchange Act Release No. 95195 (August 21, 2023), 88 FR 58324 (August 25, 2023) (SR–Phlx–2023–37), at 58325. The difference between the two PSX TotalView feeds is the delivery mechanism: the data is the same. *Id.*

⁹ See 83 FR 26314, *supra* note 4, at 26319–20.

¹⁰ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

¹¹ Similarly, if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. See 83 FR 26314, *supra* note 4, at 26319–20, and Securities Act Release No. 98966 (November 16, 2023), 88 FR 81476 (November 22, 2023) (SR–NYSENAT–2023–26).

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹²

As explained below in this filing, the Exchange’s proposed Connectivity to Proposed Third Party Data would compete with the wireless connections provided by at least two third parties. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ because it

provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission’s market-based test considers “whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.”¹⁶ If the Exchange meets that burden, “the Commission will find that its proposal is consistent with the Act unless ‘there is a substantial countervailing basis to find that the terms’ of the proposal violate the Act or the rules thereunder.”¹⁷ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange’s proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

At least two telecoms provide wireless connectivity in the MDC. A User could use such connectivity to connect to the Proposed Third Party Data. The Exchange believes that these wireless connections are at a same or similar speed as the Exchange’s

proposed Connectivity, and at a similar price.¹⁸

Accordingly, the wireless connections would compete with the Exchange’s proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange’s proposed fees.¹⁹ If the Exchange were to set its proposed fees too high, Users could respond by instead selecting the telecoms’ substantially similar wireless connectivity.²⁰

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The Exchange’s proposed service for connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More specifically, the Exchange’s proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the “Patch Panel Point”) is normalized.²¹

Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.²² Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to

¹⁸ Because the telecoms are not regulated entities, they are not obligated to make its latency figures or fees publicly available or the same for all entities.

¹⁹ See 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

²⁰ In addition, the Exchange believes that at least three third-party market participants, as well as FIDS, offer fiber connections to the Proposed Third Party Data in colocation. See 83 FR 26314, *supra* note 4, at 26323.

²¹ See NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

²² See *id.*

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-2020-08) (“Wireless Approval Order”), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁷ See Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²³ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁴ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁵ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the

MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²⁶ If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for the proposed Connectivity is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes it is reasonable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. In such a case, no additional port would be needed, as the User would be able to connect to Proposed Third Party Data using the port it already had. Similarly, the Exchange believes it is reasonable that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it

subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Exchange believes it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes it is equitable that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly

²³ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²⁴ See Securities Exchange Act Release No. 98002 (July 26, 2023), 88 FR 50232 (August 1, 2023) (SR-NYSENAT-2023-12) ("MMR Notice").

²⁵ See *id.* at 50235. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

²⁶ See Wireless Approval Order, *supra* note 16.

discriminatory, for the following reasons.

Without this proposed rule change, Users would have fewer options for Connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Exchange believes it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes that it is not unfairly discriminatory that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁷

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The proposed Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.²⁸ Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.²⁹ Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise. Nor does the Exchange have a competitive advantage over any third-party

competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.³⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level³¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.³² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing,

³⁰ See *supra* note 23.

³¹ See MMR Notice, *supra* note 24.

³² See *id.* at 50235.

²⁷ 15 U.S.C. 78f(b)(8).

²⁸ See *supra* note 21.

²⁹ See *id.*

and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³³ and Rule 19b-4(f)(6) thereunder.³⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁵

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)³⁶ 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-NYSEAT-2024-20 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-NYSEAT-2024-20. 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-NYSEAT-2024-20 and should be submitted on or before July 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14384 Filed 6-28-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100422; File No. SR-NYSEAMER-2024-40]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Connectivity Fee Schedule

June 25, 2024.

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 June 12, 2024, 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 amend the Connectivity Fee Schedule regarding colocation services and fees to provide Users with wireless connectivity to additional market data feeds. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

³³ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁶ 15 U.S.C. 78s(b)(2)(B).

³⁷ 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to additional market data feeds.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the "Existing Third Party Data"), and wired connections to more than 45 market data feeds or combinations of feeds.⁵

The Exchange proposes to add to the Fee Schedule wireless connections

("Connectivity") to four additional market data feeds (together, the "Proposed Third Party Data"):

- MIAX Pearl Equities Depth of Market Feed ("MIAX DoM"),⁶
- Nasdaq BX TotalView-ITCH FPGA,⁷
- Nasdaq PSX TotalView, and
- Nasdaq PSX TotalView-ITCH FPGA.⁸

As with most other Existing Third Party Data,⁹ the monthly charge for Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is

applicable to Connectivity to the Proposed Third Party Data.

Users would be offered Connectivity to Proposed Third Party Data through connections into the colocation center in the Mahwah, New Jersey data center ("MDC").¹⁰

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative during 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

The Exchange proposes to add the following to the Fee Schedule to reflect fees for Connectivity to Proposed Third Party Data:

Type of service	Description	Amount of charge
Wireless Connection for Third Party Data.	Wireless connection of MIAX Pearl Equities Depth of Market Feed (DoM) data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq BX TotalView-ITCH FPGA data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq PSX TotalView data.	\$5,000 per connection initial charge plus monthly charge per connection of \$6,000. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.
Wireless Connection for Third Party Data.	Wireless connection of Nasdaq PSX TotalView-ITCH FPGA data.	\$5,000 per connection initial charge plus monthly charge per connection of \$7,500. Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived.

Each proposed Connectivity service would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data

other than Toronto Stock Exchange data or CME Group data ("Single Port Third Party Data"), it would not receive an additional port for the Proposed Third Party Data, as one would not be needed.¹¹ Rather, the User would be

able to connect to Proposed Third Party Data using the same port that it already had, as a User would only require one port to connect to the Proposed Third Party Data and Single Port Third Party

⁴ For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-37, SR-NYSEARCA-2024-54, SR-NYSECHX-2024-24, and SR-NYSENAT-2024-20.

⁵ See Securities Exchange Act Release No. 99807 (March 20, 2024), 89 FR 21072 (March 26, 2024) (SR-NYSEAMER-2024-18).

⁶ As described by MIAX PEARL, LCC, "[t]he [MIAX] DoM feed is a data feed that contains the displayed price and size of each order entered on MIAX PEARL Equities, as well as order execution information, order cancellations, order modifications, order identification numbers, and

administrative messages." Securities Exchange Act Release No. 91073 (February 5, 2021), 86 FR 9096, 9100 (February 11, 2021) (SR-PEARL-2021-02).

⁷ The difference between the Nasdaq BX TotalView feed and the Nasdaq BX TotalView-ITCH feed, which is part of the Existing Third Party Data, is the delivery mechanism: the data is the same. As described by Nasdaq BX, Inc., "BX TotalView is a real-time market data product that provides full order depth using a series of order messages to track the life of customer orders in the BX market, as well as trade data for BX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages." Securities Exchange Act Release No. 98158 (August 17, 2023), 88 FR 57505 (August 23, 2023) (SR-BX-2023-020), at 57506.

⁸ According to Nasdaq PHLX LLC, "PSX TotalView is a real-time market data product that provides full order depth using a series of order messages to track the life of customer orders in the PSX market, as well as trade data for PSX executions and administrative messages such as Trading Action messages, Symbol Directory, and Event Control messages." Securities Exchange Act Release No. 95195 (August 21, 2023), 88 FR 58324 (August 25, 2023) (SR-Phlx-2023-37), at 58325.

The difference between the two PSX TotalView feeds is the delivery mechanism: the data is the same. *Id.*

⁹ See Securities Exchange Act Release No. 76748 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR-NYSEMKT-2015-85).

¹⁰ Through its Fixed Income and Data Services ("FIDS") (previously ICE Data Services) business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

¹¹ Similarly, if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. See Securities Exchange Act Release Nos. 80117 (February 28, 2017), 82 FR 12646 (March 6, 2017) (SR-NYSEMKT-2017-09), and 98963 (November 16, 2023), 88 FR 81499 (November 22, 2023) (SR-NYSEAMER-2023-59).

Data, irrespective of how many of the wireless connections it orders.

To receive a market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content. If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Connectivity to Proposed Third Party Data was requested by Users, but the Exchange believes that it would obtain less than a handful of new customers due to the proposed change.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹²

As explained below in this filing, the Exchange’s proposed Connectivity to Proposed Third Party Data would compete with the wireless connections provided by at least two third parties. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of

any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable. In considering the reasonableness of proposed services and fees, the Commission’s market-based test considers “whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.”¹⁶ If the Exchange meets that burden, “the Commission will find that its proposal is consistent with the Act unless ‘there is a substantial countervailing basis to find that the terms’ of the proposal violate the Act or

the rules thereunder.”¹⁷ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange’s proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

At least two telecoms provide wireless connectivity in the MDC. A User could use such connectivity to connect to the Proposed Third Party Data. The Exchange believes that these wireless connections are at a same or similar speed as the Exchange’s proposed Connectivity, and at a similar price.¹⁸

Accordingly, the wireless connections would compete with the Exchange’s proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange’s proposed fees.¹⁹ If the Exchange were to set its proposed fees too high, Users could respond by instead selecting the telecoms’ substantially similar wireless connectivity.²⁰

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The Exchange’s proposed service for connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEARCA-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-2020-08) (“Wireless Approval Order”), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁷ See Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

¹⁸ Because the telecoms are not regulated entities, they are not obligated to make its latency figures or fees publicly available or the same for all entities.

¹⁹ See 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

²⁰ In addition, the Exchange believes that at least three third-party market participants, as well as FIDS, offer fiber connections to the Proposed Third Party Data in colocation. See Securities Exchange Act Release No. 82618 (February 1, 2018), 83 FR 5494 (February 7, 2018) (SR-NYSEAMER-2018-02).

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the MDC (the "Patch Panel Point") is normalized.²¹

Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.²² Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²³ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁴ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing

such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁵ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.²⁶ If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the

competing wireless connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for the proposed Connectivity is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes it is reasonable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. In such a case, no additional port would be needed, as the User would be able to connect to Proposed Third Party Data using the port it already had. Similarly, the Exchange believes it is reasonable that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated

²¹ See NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

²² See *id.*

²³ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²⁴ See Securities Exchange Act Release No. 97999 (July 26, 2023), 88 FR 50190 (August 1, 2023) (SR-NYSEAMER-2023-36) ("MMR Notice").

²⁵ See *id.* at 50193. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

²⁶ See Wireless Approval Order, *supra* note 16.

because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

The Exchange believes it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes it is equitable that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons.

Without this proposed rule change, Users would have fewer options for Connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be

charged the same amount for the same services.

The Exchange believes it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the Proposed Third Party Data. Similarly, the Exchange believes that it is not unfairly discriminatory that if a User connected to Proposed Third Party Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to Proposed Third Party Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁷

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party wireless connections.

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party telecom connections or any future providers of wireless connectivity to Proposed Third Party Data. The proposed Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds

of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.²⁸ Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.²⁹ Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise. Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.³⁰ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level³¹ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In

²⁸ See *supra* note 21.

²⁹ See *id.*

³⁰ See *supra* note 23.

³¹ See MMR Notice, *supra* note 24.

²⁷ 15 U.S.C. 78f(b)(8).

this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.³² Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³³ and Rule 19b-4(f)(6) thereunder.³⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.³⁵

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)³⁶ 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-2024-40 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-NYSEAMER-2024-40. 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

give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁶ 15 U.S.C. 78s(b)(2)(B).

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-2024-40 and should be submitted on or before July 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-14381 Filed 6-28-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for Third Quarter FY 2024

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loans interest rate for loans approved on or after May 6, 2024.

DATES: Issued on June 26, 2024.

FOR FURTHER INFORMATION CONTACT:

Robert Blocker, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 619-0477.

SUPPLEMENTARY INFORMATION: The Small Business Administration publishes an interest rate for Military Reservist Economic Injury Disaster Loans (13 CFR 123.512) on a quarterly basis. The interest rate will be 4.000 for loans approved on or after May 6, 2024.

Robert Blocker,

Chief, Disaster Loan Policy Division, Office of Financial Assistance.

[FR Doc. 2024-14403 Filed 6-28-24; 8:45 am]

BILLING CODE 8026-09-P

³² See *id.* at 50193.

³³ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to

³⁷ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****[Docket No. FMCSA–2023–0186]****Hours of Service: Application for Exemption; Clym Environmental****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).**ACTION:** Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA denies the application from Clym Environmental Services LLC (Clym) requesting an exemption from the hours-of-service (HOS) regulations to allow its drivers up to 14 hours of drive time within the work shift or, in the alternative, up to 12 hours. Clym indicated that, due to the nature of its operations, complying with the 11-hour driving time limit in the HOS regulations places a strain on the company's drivers and its overall operating costs. FMCSA analyzed the application and determined that the exemption would not likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366–2722; richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.

SUPPLEMENTARY INFORMATION:**I. Public Participation***Viewing Comments and Documents*

To view comments, go to www.regulations.gov, insert the docket number “FMCSA–2023–0186” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA–2023–0186” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call

(202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analyses. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reasons for the denial (49 CFR 381.315(c)(2)).

III. Background*Current Regulatory Requirements*

To reduce the possibility of driver fatigue, FMCSA's HOS regulations in 49 CFR 395 place limits on the amount of time drivers of commercial motor vehicles (CMV) may drive. Under 49 CFR 395.3(a)(3)(i) a CMV operator may drive a maximum of 11 hours within a 14-hour period before taking the required 10 consecutive hours off duty, or the regulatorily permitted equivalent.

Applicant's Request

Clym seeks an exemption from the prohibition in 49 CFR 395.3(a)(3)(i) against driving, or allowing an operator to drive, a CMV more than 11 hours within a 14-hour period before taking the required 10 consecutive hours off duty or the equivalent. Clym specifically requested an exemption to extend the allotted driving time to 14 hours or, in the alternative, to extend the drive time to a maximum of 12 hours within the 14-hour period. Clym made this HOS exemption request for three contingencies: (1) when commercial driver's license (CDL) drivers are taking unscheduled time off for illness or injury, in which case a relief driver is needed to transport the

waste along the supply chain; (2) when there is an unexpected increase in material and a trailer needs to be moved sooner than scheduled; and (3) when there is an upcoming issue with local and state health codes for the storage of regulated medical waste. Clym indicated the exemption would apply only to drivers operating on the long-haul route between Clym's office in New Castle, PA and its ozone destruction plant in Greenfield, IN. It would not apply to any drivers operating on the company's local routes.

Applicant's Method To Ensure Equivalent Level of Safety

Clym believes there would be a minimal impact on safety, as the exemption sought would allow its drivers to have more than the one mandatory 30-minute break after 8 consecutive hours of driving. Clym's internal policy provides a one-hour company lunch break and strongly encourages its drivers to take as many breaks as necessary. Clym further stated that the round trip from the Greenfield office to the ozone destruction plant and back takes about 11 hours to complete without traffic, and it considers the run to be “very easy” as its CMVs typically operate at approximately half of the 80,000-pound legal limit.

IV. Public Comments

On November 15, 2023, FMCSA published Clym's application and requested public comment [88 FR 78450]. The Agency received two comments to the notice, both opposed to Clym's request for an exemption. The Advocates for Highway and Auto Safety (Advocates) stated the following: “Granting the application would disregard well established science on driver fatigue. Numerous researchers have stressed that long consecutive driving hours, long duty weeks, and inadequate and interrupted sleep are directly related to increased crash risks.” Specifically, Advocates cited a study showing that these risks increase when “driving towards the end of the 14-hour shift, that is, more than 10 hours after reporting for duty (*i.e.*, during hours 10 through 14 in a driver's work day).” Advocates further argued that Clym's application fails to meet the statutory requirements:

The basis for seeking the exemption is no more than the normal daily logistical issues presented by Clym's daily operations. Furthermore, the Petitioner indicates that it has already identified an alternative solution to the exemption by providing hotel rooms for its drivers when they reach their HOS limit.

AWM Associates, LLC (AWM) also opposed granting the exemption. AWM noted that Clym appears to be a “150 air-mile carrier or could set up operations to utilize the 150 air-mile exception using hotels close to the job sites.” AWM commented that Clym “has asked that its drivers may drive for up to 14 hours per shift; however, there’s no mention of relief from the 14-hour rule. Is [Clym] implying that drivers have zero on-duty hours for loading, unloading, fueling, pre-trip inspections, etc?” and raised safety concerns.

V. FMCSA Safety Analysis and Decision

FMCSA evaluated Clym’s application and public comments and denies the exemption request. The applicant failed to establish that it would likely maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. The Agency established and enforces the HOS regulations to keep fatigued drivers off the public roadways. Research studies demonstrate that long work hours reduce sleep and harm driver health, and that crash risk increases with work hours. The HOS regulations impose limits on when and how long an individual may drive, including the 11-hour driving and 14-hour “driving window” limits, to ensure that drivers stay awake and alert, and to reduce the possibility of cumulative fatigue. Granting Clym an exemption from 49 CFR 395.3(a)(3)(i) without any evidence that doing so would not have detrimental effects on safety would be inconsistent with a primary goal of the HOS regulations.

For the above reasons, Clym Environmental LLC’s exemption application is denied.

Vincent G. White,
Acting Administrator.

[FR Doc. 2024–14410 Filed 6–28–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0124]

Transparency in Fees Commercial Motor Vehicle Operators Are Charged for Towing and Recovery Services

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice; extension of comment period.

SUMMARY: FMCSA extends the comment period for its May 31, 2024, notice providing interested parties the opportunity to share their perspectives on current industry practices regarding the disclosure of towing fees to the commercial motor vehicle (CMV) owners and whether the owner is made aware of costs and fees prior to the tow. The notice announced a June 21, 2024, public meeting and provided July 1, 2024, as the deadline for the submission of written comments on the subject. FMCSA extends the comment period until August 1, 2024.

DATES: The comment period for the notice published May 31, 2024 at 89 FR 47206, is extended. Written comments concerning the disclosure of towing fees to CMV owners should be submitted by August 1, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2024–0124 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov/docket/FMCSA-2023-0124/document>. Follow the online instructions for submitting comments.

- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** (202) 493–2251.

- **Submissions Containing Confidential Business Information (CBI):** Brian Dahlin, Chief, Regulatory Evaluation Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

To avoid duplication, please use only one of these four methods. See the “Confidential Business Information” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT:

Larry W. Minor, Associate Administrator for Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–4012; larry.minor@dot.gov.

SUPPLEMENTARY INFORMATION:

A. Submitting Comments

If you want to submit a comment on this subject, please include the docket number for this notice (FMCSA–2024–0124). You may submit your comments

and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0124/document>, click on this notice, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket for this meeting. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

B. Viewing Comments and Documents

To view comments, as well as notes from this public meeting, go to <https://www.regulations.gov/docket/FMCSA-2024-0124/document> and choose the document to review. To view comments, click this notice, and click “Document Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC

20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

DOT posts comments received, 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.transportation.gov/privacy. The comments are posted without edit and are searchable by the name of the submitter.

D. Background

FMCSA published a notice concerning transparency in fees CMV operators are charged for towing and recovery services on May 31, 2024 (89 FR 47206). The notice discussed the Federal Trade Commission’s (FTC) November 9, 2023, notice of proposed rulemaking, “Rule on Unfair or Deceptive Fees” (88 FR 77420), which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The notice also discussed FMCSA’s February 7, 2024, written comments to the FTC rulemaking docket and announced the Agency’s June 21, 2024, public meeting concerning transparency in the towing fees CMV owners are charged.

At the June 21 public meeting, certain parties verbally expressed an interest in

the Agency extending the deadline for the submission of written comments. FMCSA believes it is in the public interest to allow additional time for interested parties to submit written comments to the docket. Accordingly, FMCSA extends the comment period until August 1, 2024.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–14348 Filed 6–28–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2024 Competitive Funding Opportunity: Coordinating Council on Access and Mobility (CCAM) National Technical Assistance Center

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for \$2.5 million in Fiscal Year (FY) 2024 Technical Assistance and Workforce Development funds through a competitive cooperative agreement award to establish a Coordinating Council on Access and Mobility (CCAM) National Technical Assistance Center (CCAM TA Center) that supports CCAM members, Federal agencies, their grantees, partners, and stakeholders in improving transportation access for people with disabilities, older adults, and

individuals of low income. The overarching mission of this new center is to promote and facilitate human services transportation, public transit, and non-emergency medical transportation (NEMT) coordination that advances people’s access to everyday destinations.

DATES: Applicants must submit completed proposals for each funding opportunity through the [GRANTS.GOV](https://www.grants.gov) “APPLY” function by 11:59 p.m. Eastern Time August 30, 2024. Prospective applicants should register as soon as possible on the [GRANTS.GOV](https://www.grants.gov) website to ensure they can complete the application process before the submission deadline.

ADDRESSES: Application instructions are available at FTA’s website at <https://www.transit.dot.gov/notices-funding/competitive-funding-opportunity-coordinating-council-access-and-mobility-ccam> and in the “FIND” module of [GRANTS.GOV](https://www.grants.gov). The [GRANTS.GOV](https://www.grants.gov) funding opportunity ID for the CCAM TA Center is FTA–2024–011–TPM–CCAM. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Lynn Winchell-Mendy, FTA Office of Program Management; Phone: (202) 366–3239; Email Lynn.Winchell-Mendy@dot.gov. A TDD is available for individuals who are deaf or hard of hearing at (800) 877–8339. Prospective applications may visit the following website for more information: <https://www.transit.dot.gov/notices-funding/competitive-funding-opportunity-coordinating-council-access-and-mobility-ccam>

SUPPLEMENTARY INFORMATION:

SUMMARY OF KEY INFORMATION: COORDINATING COUNCIL ON ACCESS AND MOBILITY NATIONAL TECHNICAL ASSISTANCE CENTER COMPETITIVE FUNDING OPPORTUNITY

Issuing Agency	Federal Transit Administration, U.S. Department of Transportation.
Program Overview	The CCAM TA Center supports CCAM members, Federal agencies, their grantees, partners, and stakeholders in improving transportation access for people with disabilities, older adults, and individuals of low income. The overarching mission of this new center is to promote and facilitate human services transportation, public transit, and non-emergency medical transportation (NEMT) coordination that advances people’s access to everyday destinations.
Eligible Applicants	National nonprofit organizations with a demonstrated capacity to advance technical assistance strategies that support CCAM members, Federal agencies, their grantees, partners, and stakeholders.
Eligible Projects	The overarching mission of this new center is to promote and facilitate human services transportation, public transit, and non-emergency medical transportation (NEMT) coordination that advances people’s access to everyday destinations.
Funding Amount	\$2.5 million for the first year.
Cost Share	The maximum Federal share of project costs under this program is 100 percent.
Deadline	August 30, 2024 at 11:59 PM Eastern Time.

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A. Program Description

This NOFO supports FTA's strategic goals and objectives by promoting safe, affordable, accessible, and multimodal access to opportunities and services while reducing transportation-related disparities, adverse community impacts, and health effects. The FTA solicits proposals for a cooperative agreement under FTA's Technical Assistance and Workforce Development program (49 U.S.C. 5314(a)(2)(B)), Assistance Listing 20.531, to establish, build, and manage a CCAM TA Center to encourage multisector coordination across the more than 130 Federal programs that may fund human services transportation; connect CCAM members, Federal agencies, their grantees, partners, and stakeholders; and support improved transportation access. The mission of the CCAM TA Center is to promote human services transportation coordination that advances people's access to everyday destinations.

In recognition of the fundamental importance of human services transportation and the continuing need to enhance coordination, Executive Order 13330 (February 24, 2004) on Human Service Transportation Coordination established the CCAM and directed multiple federal departments and agencies to work together to ensure that transportation services are seamless, comprehensive, and accessible. The members of the CCAM are: the Secretaries of the Departments of Transportation (DOT), Health and Human Services, Labor, Education, Interior, Housing and Urban Development, Agriculture, and Veterans Affairs; the Commissioner of the Social Security Administration; the Attorney General; and the Chairperson of the National Council on Disability.

The CCAM is tasked with seeking ways to simplify access to transportation services for people with disabilities, older adults, and individuals of low income. Funding is authorized under 49 U.S.C. 5314(a)(2)(B) for technical assistance to help providers of public transportation comply with human services transportation coordination requirements and to enhance the coordination of Federal resources for human services transportation with those of the DOT through technical assistance, training, and support services related to complying with such requirements.

The Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94) required the CCAM to develop a strategic plan to strengthen interagency

collaboration, address outstanding recommendations, and eliminate burdensome regulatory barriers to human services transportation coordination. On October 27, 2022, the CCAM officially adopted the 2023–2026 CCAM Strategic Plan, which includes specific reference to establishing a CCAM TA Center:

- Goal 1

Strengthen the CCAM and improve multisector collaboration at all levels and across jurisdictions.

- Activity 1.1

Create and manage a CCAM national technical assistance (TA) center that works across multiple sectors and builds mobility management capacity, connecting regional, State, and local CCAM partners to improve transportation access.

- Performance Measure 1.1.1

By 2024, select one recipient from a Notice of Funding Opportunity (NOFO) to establish the CCAM national TA center.

FTA has previously carried out similar activities through a cooperative agreement that established and funded the National Center for Mobility Management (NCMM). The CCAM TA Center will be the successor of NCMM and build upon its previous work supporting the CCAM.

The CCAM TA Center will function as a “one-stop shop” for CCAM members, Federal agencies, their grantees, partners, and stakeholders to find information and receive assistance on multisector coordination in human services transportation. The primary goals and related activities of the CCAM TA Center are to:

1. Enhance safe, accessible, and equitable transportation options aligned with the CCAM through regional, state, and local coordination and strategic partnerships.

2. Actively engage CCAM members, Federal agencies, their grantees, partners, and stakeholders to emphasize the important role of transportation in access to services and everyday destinations, and to provide technical assistance to reduce barriers to human services transportation coordination.

3. Support and highlight the activities and initiatives of the CCAM, its workgroups, and partner agencies that improve Federal transportation coordination.

4. Disseminate guidance, best practices, and communication campaigns to increase agencies' awareness of available transportation resources and funding.

5. Provide self-directed and customized technical assistance,

training, and support services to CCAM members, Federal agencies, their grantees, partners, and stakeholders.

6. Implement multisector planning and pilot grants to develop and test innovative regional or state-based transportation solutions.

7. Research certain subjects for new transportation-related data, strategies, or insights.

The CCAM TA Center will be managed by the recipient of the cooperative agreement in coordination with FTA headquarters staff. Eligible applicants are national nonprofit organizations with a demonstrated capacity to advance technical assistance strategies that support CCAM members, Federal agencies, their grantees, partners, and stakeholders as they work to develop multisector coordination and strategic partnerships around human services transportation.

This Notice solicits competitive proposals addressing the mission, goals, and tasks set forth for this new CCAM TA Center, provides instructions for submitting proposals, and describes the evaluation criteria for proposal selection.

This announcement is available on the FTA website at <https://www.transit.dot.gov/notices-funding/competitive-funding-opportunity-coordinating-council-access-and-mobility-ccam>. A synopsis of this funding opportunity will be posted in the “FIND” module of the government-wide, electronic grants website called GRANTS.GOV, which can be accessed at this web address: <https://www.grants.gov>.

B. Federal Award Information

FTA will award the CCAM TA Center as a 5-year cooperative agreement to a national nonprofit organization with a demonstrated capacity to advance technical assistance strategies that support CCAM members, Federal agencies, their grantees, partners, and stakeholders as they work to develop multisector coordination and strategic partnerships around human services transportation. This cooperative agreement will be managed by FTA's CCAM TA Center Program Manager in FTA's headquarters office.

The CCAM TA Center will benefit from having committed CCAM partners who will provide guidance and expertise. In turn, their stakeholders will receive tailored TA from the CCAM TA Center for their transportation-related needs. The following operating divisions of the U.S. Department of Health and Human Services have committed to being guidance partners in the CCAM TA Center: Administration

for Children and Families (ACF), Administration for Community Living (ACL), Health Resources and Services Administration (HRSA), and Centers for Medicare and Medicaid Services (CMS). The following operating division of the U.S. Department of Agriculture has committed to being a guidance partner in the CCAM TA Center: Rural Development (RD). The following operating division of the U.S. Department of Labor has committed to being a guidance partner in the CCAM TA Center: Office of Disability Employment Policy (ODEP). The ACF, ACL, HRSA, CMS, RD and ODEP will participate in specific partnership activities as defined in the CCAM TA Center's Scope of Work (SOW), and have also committed to:

1. Designating at least one staff-level point person to act as a liaison to the Center;
2. Providing annual input into the Center's scope of work (SOW) and help prioritize activities for each of the five years;
3. Attending quarterly check-in meetings with the Center and FTA to receive status updates on the SOW implementation; and
4. Once the Center is established, being publicly acknowledged on the Center's website as a guidance partner.

Other CCAM members may enter their own financial assistance agreements with the successful applicant to address transportation coordination activities at any point during the 5-year cooperative agreement.

The FTA will award one cooperative agreement, funded up to \$2.5 million for the first year with a start date in 2024 to be determined. FTA expects to award subsequent funding of up to \$2.5 million per year for four additional years (for a total of \$12.5 million over five years). However, the availability of funding after the first year will depend upon decisions and program priorities established by the Secretary of Transportation related to the implementation of provisions set forth in 49 U.S.C. 5314 (Section 5314), future authorizations and appropriations, and the CCAM TA Center's annual performance reviews. This funding opportunity will be awarded under the terms of a cooperative agreement. FTA will issue specific guidance to the awardee regarding pre-award authority at the time of selection. For more information about FTA's policy on pre-award authority, please see the most recent Apportionment Notice on FTA's website.

This project is funded under Section 5314 and therefore, FTA Circular 6100.1E Research, Technical Assistance,

and Training Programs: Application Instructions and Program Management Guidelines (available at <https://www.fta.dot.gov/regulations-and-guidance/fta-circulars/research-technical-assistance-and-training-program>) will apply in administering the program. FTA will have substantial involvement in the administration of the cooperative agreement. FTA's role includes the right to participate in decisions to redirect and reprioritize project activities, goals, and deliverables.

C. Eligibility Information

1. Eligible Applicants

Eligible lead applicants are national nonprofit organizations with a demonstrated capacity to advance technical assistance strategies that support CCAM members, Federal agencies, their grantees, partners, and stakeholders as they work to develop multisector coordination and strategic partnerships around human services transportation. An eligible applicant may act as a lead entity for a partnership with one or more other eligible applicants that participate in the CCAM TA Center as subrecipients. Individuals and for-profit entities are ineligible to apply for this funding.

Lead applicants must have a demonstrated capacity to deliver a national technical assistance and training program, among other applicable methods to address the center's primary goals and related activities outlined above.

The cooperative agreement will be between FTA and the selected lead applicant, which must have a primary or substantial interest in performing a majority of the work in the project and must not simply act as a pass-through for funds. An application by a group of eligible applicants must clearly identify the lead applicant. Lead applicants should include a letter of confirmed support with sufficient evidence of the partnership (subrecipients) from each national nonprofit organization as part of its application. Sufficient evidence may include a memorandum of agreement or letter of intent that describes the parties' roles, responsibilities, and financial commitment to the proposed project. Individuals, for-profit entities, and other Federal agencies are ineligible to apply for this funding.

2. Cost Sharing

The FTA will fund up to 100 percent Federal share but may give priority consideration to proposals that include non-federal matching funds. See 2 CFR

200.306(b) and FTA Circular 6100.1E for acceptable forms of local match.

D. Application and Submission Information

1. Address To Request Application Package

Applications must be submitted, electronically, through *GRANTS.GOV*. Applicants can find general information for submitting applications through *GRANTS.GOV*. Mail and fax submissions will not be accepted. Applicants may also attach additional supporting information. Failure to submit the information as requested may delay or prevent review of the application.

2. Content and Form of Application Submission

A complete proposal submission consists of at least two forms: (1) the SF-424 Mandatory Form (downloaded from *GRANTS.GOV* or at the FTA website at <https://www.transit.dot.gov/notices-funding/competitive-funding-opportunity-coordinating-council-access-and-mobility-ccam>; and (2) a narrative application document submitted in a Microsoft Word, Adobe Acrobat, or compatible file format, double-spaced using Times New Roman, 12-point font. Once completed, the narrative application document must be placed in the attachments section of the SF-424 Mandatory form. Applicants must attach the narrative application file to their submission in *GRANTS.GOV* to successfully complete the proposal process.

The application must include responses to all sections of the SF-424 Mandatory Form and all components of the narrative application document unless a section is indicated as optional. FTA will use the information in the narrative application document to determine applicant and project eligibility and to evaluate the proposal against the selection criteria described in part E of this notice. If applicants choose to submit separate proposals for individual consideration by FTA, they must submit each proposal with a separate SF-424 and narrative application document.

Applicants may attach additional supporting information to the SF-424 submission, including, but not limited to letters of support, memorandums of understanding, interagency agreements, project budgets, or excerpts from other relevant documents. Supporting documentation must be described and referenced by file name in the narrative application document, or it may not be reviewed.

Applicants must fill in all fields unless stated otherwise on the SF-424 form and include all requested components of the narrative application document. If applicants copy information from another source, they should verify that the form and narrative application document have fully captured pasted text and that it has not truncated the text due to character limits built into the form. Applicants should use both the "Check Package for Errors" and the "Validate Form" buttons on all required fields in the SF-424.

The narrative application document must contain the following components and adhere to the specified maximum lengths:

a. Cover sheet (1 page). The cover sheet must include the name of the entity submitting the proposal, the principal's name, title, and contact information (e.g., address, phone, and email), and the name and contact information for the key point of contact for each primary goal and related activities of the agreement referenced under the "Program Description" (Section A) of this Notice.

b. Detailed budget proposal and budget narrative (not to exceed 3 pages)

c. Project narrative and qualifications (not to exceed 10 pages). The applicant should submit a project narrative statement describing, for itself or in combination with its committed partners:

i. The existing and future capacity of the applicant to implement the project goals, objectives, activities, deliverables, milestones, timeline, and intended outcomes for the CCAM TA Center.

ii. The methodology for addressing the project goals, objectives, activities, deliverables, milestones, timeline, and intended outcomes for the CCAM TA Center.

iii. The methodology used to develop performance measures and track the benefits of the CCAM TA Center, including how the applicant and its partners will assess success:

vi. The applicant's understanding of the CCAM, its priorities, and the 2023–2026 CCAM Strategic Plan;

v. The applicant's knowledge and experience with developing and supporting multisector strategic partnerships, Federal Fund Braiding, Cost Allocation, Cost Sharing, Vehicle Sharing, and other CCAM initiatives;

vi. The applicant's demonstration of awareness of mobility management as a strategy to improve human services transportation coordination;

vii. The applicant's experience with grant-making developing performance measures, tracking performance and

spending, and communicating lessons learned and project benefits to stakeholders;

viii. The applicant's knowledge of non-emergency medical transportation (NEMT) and its relationship with public transit;

ix. A detailed plan for communication, technical assistance, and outreach at all levels, including how the applicant will work with CCAM members, Federal agencies, their grantees, and partners and stakeholders to obtain input and promote coordination, build partnerships, encourage adoption of CCAM initiatives, and equip them to problem-solve transportation-related access to their programs;

ix. Staff qualifications including: (1) prior experience providing technical assistance (especially related to multisector partnerships, coordination, and mobility management) to CCAM members, Federal agencies, their grantees, and partners and stakeholders, (2) prior experience implementing the other tasks outlined in this solicitation, (3) staff members' knowledge of NEMT, Federal Fund Braiding, the 2023–2026 CCAM Strategic Plan, and other CCAM initiatives, and (4) a one-page biographical sketch for each key staff person whose knowledge, skills, and experience demonstrate the applicant's capacity to deliver its proposal from the applicant and its proposed subrecipients.

d. Statement of activities (not to exceed 15 pages). The application also should discuss how the recipient will perform the following short-term and long-term activities:

Short-Term Activities:

1. Hiring needed staff and setting up the new center, including developing a website (including resources previously developed through the National Center for Mobility Management), that houses and delivers a library of applicable coordination tools and guidance; acts as a clearinghouse for information on multi-sector partnerships and coordination; and facilitates outreach to CCAM members, Federal agencies, their grantees, partners, and stakeholders.

2. Developing an online fully functional CCAM TA Center Help Desk that will enable email and phone technical assistance inquiries and responses to questions/topics on multisector partnerships, Federal fund braiding, vehicle sharing, cost allocation, and other CCAM initiatives; this system should be able to gather performance measures that track web-analytics, technical assistance requests, time to resolution of requests, types of requests, and enable quarterly reports to

FTA on what activities have been completed, how many people have received assistance, the cost of that assistance, and the satisfaction of those who sought assistance.

3. Developing an SOW for the first year of operations of the CCAM TA Center, including but not limited to:

- Recommendations to FTA on a multisector planning/pilot grant program that promotes and appraises the benefits of innovative, regional or state-based transportation solutions;

- An outreach plan to promote the center, its resources and relevant news through various channels (e.g., emails, blogs, social media, newsletter);

- A plan for transition of the existing NCMM website, including the Community Transportation Map and Database, and related products, as well as the Transportation Technical Assistance Coordination Library (TACL) to the new Center;

- A plan to transition the existing CCAM Cost Allocation Technology for Non-Emergency Medical Transportation model, developed with FTA funding in response to section 3006(c)(1)(A) of the FAST Act, to the CCAM TA Center website and provide ongoing maintenance, promotion, and technical assistance on how to use it.

Relevant websites can be found in Section H, Other Information.

Long-term/ongoing activities:

1. Educating CCAM members and their networks by providing TA in a variety of ways:

- Spreading awareness about the important role of transportation in access to services and everyday destinations and how to provide technical assistance to reduce barriers to human services transportation coordination;

- Developing written and electronic training materials that explain how to leverage funds from CCAM partners to support transportation coordination activities;

- Mapping and disseminating information on available funding opportunities;

- Maintaining a resource library that tracks and shares results from successful multisector partnerships, case studies, promising and best practices, videos, publications, and webinars;

- Managing the Transportation Technical Assistance Coordination Library (TACL), including managing inquiries, keeping information current, convening members for the review and approval process, and assessing its use;

- Promoting CCAM coordination tools and guidance, like the Federal Fund Braiding Guide, Program Inventory, Cost-Sharing Policy, and

Vehicle Sharing Policy, and how to use them;

2. Encouraging and supporting transportation-related coordination and access through the use of CCAM initiatives at the state and regional levels by, for example:

- Pursuing, facilitating, and supporting partnerships between transportation agencies and organizations that provide health-related and social services;
- Disseminating information on NEMT, examples of coordination between state Medicaid agencies, state DOTs, transit associations, and public transit agencies, and addressing related technical assistance inquiries;
- Fostering relationships with other CCAM member TA Centers and their grantees through peer-to-peer meeting exchanges and collaboration opportunities (e.g., joint convenings, webinars, publications, presentations at CCAM member conferences);
- Managing relationships with and coordinating the activities of CCAM members who contribute resources to the CCAM TA Center, through facilitating regular meetings, sharing outputs and outcomes, and identifying opportunities for joint activities;

3. Supporting and guiding CCAM members, Federal agencies, their grantees, and partners and stakeholders in identifying needs, barriers to transportation coordination, and developing solutions, (e.g., establishing regional liaisons, planning and facilitating roundtables or meetings at the state level, obtaining input through surveys and data collection);

4. Developing a mechanism to utilize CCAM member program staff, recipients of federal funding from a CCAM member agency, national organizations, and other applicable stakeholders to guide the work of the center (e.g., determining focus of projects and serving on the selection committee for the CCAM TA Center grant program, selecting and managing a Speaker's Bureau for partner events, recommending topic areas for technical assistance products, reviewing publications as appropriate);

5. Developing a grant program that offers funding for planning or pilot projects, as subawards under this cooperative agreement's budget and SOW, which:

- Stems from identified needs, trends, and gaps in multi-sector transportation coordination;
- Encourages multisector collaboration in the composition of the project team or project advisory group;
- Tracks the impact of funded projects on human services

transportation coordination and people's access to everyday destinations;

- Frames the technical assistance delivered by the Center (e.g., best practices, case studies, webinars);
- Serves as a pipeline for innovative multisector project applications for FTA funding programs (e.g., Sections 5307, 5310, 5311, 5312, and Innovative Coordinated Access and Mobility (ICAM) Grants) to increase sustainability and match funding.

6. Analyzing research from sources such as the Transit Cooperative Research Program (TCRP) Reports; FTA's Research and Innovation Program; and other FTA-funded TA centers;

7. Developing a feedback system that enables opportunities for improvement of the Center's customer service, programs, and processes; and

8. Developing a plan for evaluating the CCAM TA Center's activities and performance measures.

f. Supplemental Materials

Supplemental materials, such as letters of support, can be included in appendices that are beyond the page limits above but are not to exceed 15 additional pages.

g. Geographic Location, Target Groups, and Emphasis Areas

The precise locations of the proposed partners, while identifying their areas of expertise, and impacts expected from their direct involvement in the CCAM TA Center. Graphic aids may be attached as needed.

h. Strategic External Partners Other Than Subrecipients

FTA expects applicants to engage a broad range of stakeholder organizations to deliver the short-term and long-term activities of the CCAM TA Center. These stakeholder organizations may provide input into CCAM TA Center activities, including providing strategies for meeting the diverse needs of CCAM members, Federal agencies, their grantees, and others.

To be eligible for funding under this NOFO, applicants must demonstrate the ability to develop relationships with external partners to support the CCAM TA Center's primary target audience.

External partner entities could include, but are not limited to:

- Federally-supported technical assistance centers
- Operators of public transportation
- Educational institutions, which include entities providing professional accreditation, degree, or certification programs, such as

universities, community colleges, or trade schools, either non-profit or for-profit

- Non-profit organizations that support the mission of human services transportation coordination and multisector partnerships
- Recipients of federal funding from a CCAM member agency

An applicant should include evidence of partnerships as part of its application. Sufficient evidence may include a memorandum of agreement or letter of intent that describes the parties' roles, responsibilities, and commitment to the proposed project.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) register in SAM before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making the award to another applicant. These requirements do not apply if the applicant has an exception approved by FTA under 2 CFR 25.110 (c) or (d). SAM registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completing all steps. For additional information on obtaining a unique entity identifier, please visit <https://www.sam.gov>.

4. Submission Dates and Times

Project proposals must be submitted electronically through the [GRANTS.GOV](https://www.grants.gov) website at <https://www.grants.gov> by 11:59 p.m. Eastern Time August 30, 2024. Late applications will not be accepted. Mail and fax submissions will not be accepted. Prospective applicants should initiate the process by registering on the [GRANTS.GOV](https://www.grants.gov) website promptly to ensure completion of the application process before the submission deadline.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to correct any problems that may have caused [GRANTS.GOV](https://www.grants.gov) to reject the submission. Deadlines will not be extended due to

scheduled website maintenance. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website.

Within 48 hours after submitting an electronic application, the applicant should receive an email message from *GRANTS.GOV* with confirmation of successful transmission to *GRANTS.GOV*. If a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to update their registration before submitting an application. Registration in SAM is renewed annually and persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

Proposed projects under the CCAM TA Center must provide direct support to CCAM members, Federal agencies, their grantees, and partners and stakeholders in improving transportation access for people with disabilities, older adults, and individuals of low income. Capital expenses such as equipment purchases are not considered to be eligible costs unless they directly relate to the technical assistance being supported by FTA funds. Acceptable costs can include but are not limited to technology and start-up costs for information technology systems and website resources, subject matter expert consultants as needed, salaries and fringe benefits of direct staff, support staff, staff travel to attend relevant conferences and provide on-site technical assistance, office space, program materials and supplies, and indirect costs.

Funds awarded under this notice cannot be used to reimburse projects for otherwise eligible expenses incurred prior to FTA award of a grant agreement or cooperative agreement unless FTA has issued a "Letter of No Prejudice" for

the project before the expenses are incurred. Allowable direct and indirect expenses must be consistent with the Governmentwide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.IE.

6. Other Submission Requirements

Applicants may submit more than one proposal. However, proposals must not be duplicative. Submission of multiple proposals from a single entity will not increase that entity's chances of being awarded funding.

E. Application Review Information

1. Criteria

FTA will evaluate proposals according to the following criteria:

a. **Project Management Approach**—FTA will evaluate whether an applicant's proposal demonstrates the ability to meet and measure the goals of the CCAM TA Center, to deliver the proposed outcomes and carry out the technical assistance requirements as evidenced by an effective program management plan. Consideration will be given to the extent to which an applicant identifies a unique or innovative approach in providing technical assistance to promote multisector coordination in human services transportation.

b. **Organizational Capacity, Qualifications and Experience of Staff and Key Personnel**—FTA will evaluate the capacity of the lead applicant and its proposed partners and subrecipients to effectively staff the proposed CCAM TA Center and deliver the proposed outcomes, as well as the fiscal, administrative, and performance management capacity in implementing key components.

c. **Knowledge and Understanding of CCAM**—FTA will evaluate the applicant on demonstrated understanding of the CCAM, its members, their networks and technical assistance centers, and CCAM's priorities, initiatives, and tools.

d. **Strategic Partnership Development and Outreach**—FTA will evaluate whether proposals demonstrate an ability to develop and maintain long-standing and strong partnerships (other than subrecipients) among CCAM members, Federal agencies, their grantees, and partners and stakeholders, and the applicant's plan to communicate CCAM priorities and initiatives and include them in CCAM TA Center activities and technical assistance opportunities.

e. **Research and Demonstration Capacity**—Proposals should demonstrate the applicant's capability

and capacity (either by itself or in combination with its proposed subrecipients and other partners) to conduct research, analysis, and demonstration projects related to mobility management and multisector transportation coordination in support of CCAM members, Federal agencies, their grantees, and partners and stakeholders.

2. Review and Selection Process

A technical evaluation committee made up of FTA staff, including the FTA CCAM TA Center Program Manager, will screen each application for eligibility and evaluate proposals based on the published evaluation criteria. FTA may request clarification from any applicant about any statement in its application that FTA finds ambiguous or request additional documentation to be considered during the evaluation process to clarify information contained in the proposal. After considering the findings of the technical evaluation committee, the FTA Administrator will determine the final selection.

3. Integrity and Performance Review

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through *SAM.GOV*. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206, Federal Awarding Agency Review of Risk Posed by Applicants.

F. Federal Award Administration Information

1. Federal Award Notice

After the FTA Administrator has selected the proposal to be funded, the successful applicant will be notified by email or telephone of their selection, and in addition, the selection will be announced on FTA's website.

2. Administrative and National Policy Requirements

a. Execution of the FTA Agreement

FTA will instruct the successful applicant how to execute their cooperative agreement in FTA's electronic Transit Award Management

System (TrAMS). FTA may withdraw its offer to provide Federal assistance if the recipient does not provide an application in TrAMS consistent with the applicant's proposal submission within 90 days following the date of FTA's selection of the applicant.

b. Start Date and Incurred Costs

Unless FTA states otherwise in writing, costs incurred prior to FTA award are not eligible as project expenses. The recipient may begin to incur project costs when the award is executed in FTA's Transit Award Management System (TrAMS). FTA expects recipients to implement the projects awarded as soon as possible and to fully accomplish objectives during the agreed period of performance, recognizing that full transparency and accountability are required for all expenditures.

c. Standard Assurances

Selected recipients must comply with all Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out project supported activities by this FTA award. In addition to these requirements, recipients of FTA funds are required to execute the most current Certifications and Assurances before entering into a grant or cooperative agreement.

d. Statement of Work

Once selected for award, the recipient will prepare a Statement of Work (SOW) for its award in a format provided by FTA. The SOW includes estimated milestone dates and performance measures and goals for major activities and products which are SMART—specific, measurable, achievable, relevant, and timebound. Activities should be justified in terms of eligible program activities and proposals should clearly demonstrate the connection between the planned work and at least one of the specific program activities cited. The SOW also should address supporting activities, such as marketing plans for engaging participants or dissemination strategies for sharing the results, if such are critical to the success of the CCAM.

This cooperative agreement will be managed from FTA's headquarters office. FTA—in consultation with ACF, ACL, HRSA, CMS, RD, and ODEP—will participate in activities by negotiating the final SOW, attending review meetings, commenting on technical reports, maintaining frequent contact with the project manager, approving key

decisions and activities, and redirecting project activities, as needed.

e. Measuring Outcomes

The recipient will be required to assist FTA evaluate the project and its outcomes. FTA will evaluate the project according to the metrics and goals approved in the Statement of Work for the project. FTA anticipates applying metrics, among others, that will demonstrate target audience usage and feedback on the services and resources of the center.

f. Data Access & Data Sharing

Recipients funded under this announcement will be required to gather and share all relevant and required data with FTA within appropriate and agreed-upon timelines, to support any project evaluations.

In response to the White House Office of Science and Technology Policy memorandum, dated February 22, 2013, titled "Increasing Access to the Results of Federally Funded Scientific Research," the Department is incorporating Public Access requirements into all funding award (e.g., grants, cooperative agreements, etc.) for scientific research. Recipients are required to include these obligations in any sub-awards or other related funding agreements.

Recipients must remove all confidential business information (CBI) or personally identifiable information (PII) information before providing public access to any project data. All appropriate data are to be accessible to FTA and the public for a minimum of 5 years after the period of performance has expired. Recipients and sub-recipients must make available to FTA copies of all work developed in performance of a project funded under this announcement, including but not limited to software and data.

g. Knowledge Transfer

Recipients and sub-recipients may be asked, during the period of performance, to participate in information exchange meetings, webinars, or outreach events to support FTA's goal of advancing models of success and information that is helping to address human services transportation coordination.

3. Reporting

Post-award reporting requirements include electronically submitting Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system and providing requested information for FTA to complete its Annual Report on

Technical Assistance and Workforce Development (Fiscal Year 2022 Report 0240).

As part of completing the annual certifications and assurances required of FTA recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

G. Federal Awarding Agency Contact

For questions about applying for the funding opportunity outlined in this notice, please contact the CCAM TA Center Program Manager, Lynn Winchell-Mendy, phone: 202.366.3239, or email: Lynn.Winchell-Mendy@dot.gov. A TDD is available at 800.877.8339 (TDDFIRS). Additionally, you may visit FTA's website for this program at <https://www.transit.dot.gov/notices-funding/competitive-funding-opportunity-coordinating-council-access-and-mobility-ccam>.

For more on managing projects in accordance with FTA requirements, see FTA Circular 6100.1E. This Circular includes requirements on project management and administration including quarterly reporting, financial management, and payment.

To ensure that applicants receive accurate information about eligibility or the program, applicants are encouraged to contact FTA directly with questions, rather than through intermediaries or third parties.

H. Other Information

This program is not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. The Department may share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives. All information submitted to FTA will become records of FTA and may be disclosed in response to a Freedom of Information Act (FOIA)

request. If an applicant submits information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant must provide that information in a separate document, which the applicant may reference from the application narrative or other portions of the application. For the separate document containing confidential information, the applicant must do the following: (1) state on the cover of that document that it “Contains Confidential Business Information (CBI);” (2) mark each page that contains confidential information with “CBI;” and (3) highlight or otherwise denote the confidential content on each page. FTA will protect confidential information complying with these requirements to the extent required under applicable law. If FTA receives a Freedom of Information Act (FOIA) request for the information that the applicant has marked in accordance with this section, FTA will follow the procedures described in DOT’s FOIA regulations at 49 CFR 7.29. Only information that is in the separate document, marked in accordance with this paragraph, and ultimately determined by FTA to be confidential will be exempt from disclosure under FOIA.

For more information on the CCAM, its members, initiatives, resources (including the CCAM Cost Allocation Model, the CCAM Federal Fund Braiding Guide, and the CCAM Program Inventory), and 2023–2026 Strategic Plan, see <https://www.transit.dot.gov/coordinating-council-access-and-mobility>.

For more information on the National Center for Mobility Management and its initiatives and resources, including the Community Transportation Map and Database, see <https://nationalcenterformobilitymanagement.org/>. For more information on FTA’s Sponsored Technical Assistance Centers see <https://www.transit.dot.gov/regulations-and-programs/access/ccam/about/federal-transit-administration-sponsored-technical>.

For more information on FTA’s Transportation Technical Assistance Coordination Library (TACL) see <https://www.nationalrtap.org/Resource-Center/TACL>.

For more information on FTA’s cost allocation methodology and technology, see <https://www.transit.dot.gov/access/ccam/cost-allocation-technology-non-emergency-medical-transportation-final-report>.

For more information on NEMT see <https://www.cms.gov/medicare/medicaid-coordination/states/non-emergency-medical-transportation>.

The FTA Annual Report on Technical Assistance and Workforce Development for Fiscal Year 2022 (Report 0240) can be found at <https://www.transit.dot.gov/research-innovation/fta-annual-report-technical-assistance-and-workforce-development-fiscal-year>.

Veronica Vanterpool,
Acting Administrator.
[FR Doc. 2024–14428 Filed 6–28–24; 8:45 am]
BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2024 Competitive Funding Opportunity: Enhancing Mobility Innovation

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for a total of \$1,936,000 in Fiscal Year (FY) 2023 Public Transportation Innovation funds in competitive cooperative agreement awards for projects that enhance mobility innovations for transit. Funds will be awarded for projects that advance emerging technologies, strategies, and innovations in traveler-centered mobility in two distinct areas. Of the total available funds, \$968,000 is

available for projects to accelerate innovations that improve mobility and enhance the rider experience with a focus on innovative service delivery models, creative financing, novel partnerships, and integrated payment solutions. Another \$968,000 is available for projects to develop software solutions that facilitate the provision of integrated demand-response public transportation service that dispatches public transportation fleet vehicles through riders’ mobile devices or other means. Projects will be selected based on the criteria outlined in this notice. FTA may award additional funding that is made available to the program prior to the announcement of project selections.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* “APPLY” function by 11:59 p.m. Eastern time on August 30, 2024.

Prospective applicants should initiate the process by registering on the *GRANTS.GOV* website promptly to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA’s website at <https://www.transit.dot.gov/howtoapply> and in the “FIND” module of *GRANTS.GOV*. The funding opportunity ID is FTA–2024–010–TRI–EMI. Mail, fax, and email submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Natalie Covill-Fontaine, FTA Office of Research, Demonstration and Innovation, phone: 202–366–7564, or email: n.covillfontaine@dot.gov.

SUPPLEMENTARY INFORMATION:

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SUMMARY OVERVIEW OF KEY INFORMATION: ENHANCING MOBILITY INNOVATION COMPETITIVE FUNDING OPPORTUNITY	
Issuing Agency	Federal Transit Administration, U.S. Department of Transportation.
Program Overview	The Enhancing Mobility Innovation Competitive Funding Opportunity seeks projects that advance emerging technologies, strategies, and innovations in traveler-centered mobility in two areas: <i>Concepts development and/or demonstration projects</i> that improve mobility and enhance the rider experience, with a focus on innovative service delivery models, creative financing, novel partnerships, and integrated payment solutions; and <i>Software development projects</i> that facilitate the provision of demand-response public transportation services that dispatch public transportation fleet vehicles through riders’ mobile devices or other advanced means.
Eligible Applicants	Providers of public transportation, including public transportation agencies, state or local government DOTs, and federally recognized Indian tribes.

SUMMARY OVERVIEW OF KEY INFORMATION: ENHANCING MOBILITY INNOVATION COMPETITIVE FUNDING OPPORTUNITY—
Continued

Eligible Projects	• Private for-profit and not-for-profit organizations incorporated in a jurisdiction of the United States, including shared-use mobility providers, private operators of transportation services, technology system suppliers and integrators, bus or vehicle manufacturers or suppliers, software and technology developers, financial institutions, consultants, research consortia, and industry organizations. • State, city, or local government entities, including multi-jurisdictional partnerships and organizations such as Metropolitan Planning Organizations; or • Institutions of higher education, including large research universities, particularly those with Minority Serving Institution status. <i>Concepts Development and/or Demonstration Projects:</i> • Activities may include all activities that advance promising technologies, practices, and strategies and accelerate innovations in mobility for transit, including, but not limited to, planning, acquiring essential equipment or services, project implementation, and evaluating project results. • For projects that develop novel operational concepts without a demonstration component, activities may include data collection, technology scanning and feasibility analysis, engagement and outreach, benefits and costs analysis, and modeling forecasts of proposed concepts' climate and equity impacts. <i>Software Development Projects:</i> • Activities may include establishing user needs, defining system requirements, development, validation, and verification of the software, modeling, and simulation, and/or pilot implementation with a software solution that can be demonstrated to FTA.
Funding Amount	<i>Concepts Development and/or Demonstration Projects:</i> \$968,000. <i>Software Development Projects:</i> \$968,000. Additional funds made available prior to project selection may be allocated to eligible projects.
Cost Share	The maximum Federal share of project costs under this program is 80 percent.
Deadline	August 30, 2024 at 11:59 p.m. Eastern Time.

A. Program Description

Under FTA's Public Transportation Innovation Program (49 U.S.C. 5312(b)), FTA may make grants or enter into contracts or cooperative agreements for research, development, demonstration, and deployment projects of national significance to public transportation. FTA developed this NOFO (Federal Assistance Listing: 20.530) under this authority. The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) directs FTA to competitively fund \$1,000,000 in cooperative agreements to accelerate innovations that improve mobility and enhance the rider experience and \$1,000,000 in cooperative agreements for the development of software solutions to facilitate demand-response public transportation. After the required takedown of \$32,000 per program, for \$64,000 total for the two program areas, to support the U.S. Department of Transportation's Small Business Innovation Research (SBIR) program, a total of \$1,936,000 is available under this notice.

Specifically, FTA is seeking projects that advance emerging technologies, strategies, and innovations in traveler-centered mobility in two distinct areas: (a) to develop novel operational concepts and/or demonstrate innovations that improve mobility and enhance the rider experience, with a focus on innovative service delivery models, creative financing, novel partnerships, and integrated payment solutions; and (b) to develop software solutions that facilitate the provision of

demand-response public transportation service that dispatches public transportation fleet vehicles through riders' mobile devices or other advanced means.

These research efforts build upon over \$46 million in prior FTA investments in mobility innovation through FTA's Mobility on Demand (MOD) Sandbox, the Integrated Mobility Innovation (IMI) Program, the Accelerating Innovative Mobility (AIM) Challenge Grant Initiative, and the previous Enhancing Mobility Innovation (EMI) funding opportunity. The EMI program seeks to continue the momentum of the over 68 previous projects to provide safe, reliable, equitable, accessible, and carefree mobility for all travelers. This NOFO also advances the goals of Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" (86 FR 7037).

B. Federal Award Information

To ensure the most impactful projects for each project area, FTA is seeking projects with a minimum award amount of \$400,000. FTA anticipates awarding two to four projects under this funding opportunity. Due to funding limitations, applicants that are selected for funding may receive less than the requested amount. Only proposals from eligible recipients for eligible activities will be considered for funding.

Pre-award authority is subject to FTA approval and is only available for costs incurred after the announcement of project selections on FTA's website. See

the description of pre-award authority further down in this notice.

Projects under this competition are for research and development efforts and, as such, FTA Research Circular 6100.1E (available at <https://www.fta.dot.gov/regulations-and-guidance/fta-circulars/research-technical-assistance-and-training-program>) guidance will apply in administering the program.

An applicant whose proposal is selected for funding will receive a cooperative agreement award with FTA to be administered according to Circular 6100.1E and as set forth in 31 U.S.C. 6305. FTA will have substantial involvement in the administration of the cooperative agreement. FTA's role includes the right to participate in decisions to redirect and reprioritize project activities, goals, and deliverables.

C. Eligibility Information**1. Eligible Applicants**

Eligible applicants under this notice are:

- Providers of public transportation, including public transportation agencies, state or local government DOTs, and federally recognized Indian tribes.

- Private for-profit and not-for-profit organizations incorporated in a jurisdiction of the United States, including shared-use mobility providers, private operators of transportation services, technology system suppliers and integrators, bus or vehicle manufacturers or suppliers, software and technology developers,

financial institutions, consultants, research consortia, and industry organizations.

- State, city, or local government entities, including multi-jurisdictional partnerships, and organizations such as metropolitan planning organizations; or

- Institutions of higher education, including large research universities, particularly those with Minority Serving Institution status.

- Eligibility is limited to United States entities.

On the application form, eligible applicants are encouraged to identify one or more project partners with a substantial interest and involvement in the project to participate in the implementation of the project. Eligible applicants that are not providers of public transportation are encouraged to identify in the application at least one provider of public transportation as a project partner.

If an application that involves such a partnership is selected for funding, the competitive selection process will be deemed to satisfy the requirement for a competitive procurement under 49 U.S.C. 5325(a) for the named entities. Applicants are advised that any changes to the proposed partnership will require FTA written approval, must be consistent with the scope of the approved project, and may necessitate a competitive procurement. FTA encourages applicants to thoroughly vet potential partners before applying, as changes in key project partners could result in project termination.

The applicant must be able to carry out the proposed agreement and procurements, if needed, with project partners in compliance with all applicable Federal, state, and local laws.

To be considered eligible, applicants must be able to demonstrate the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this program.

2. Cost Sharing or Matching

The maximum Federal share of project costs under this program is 80 percent. Applicants may seek a lower Federal contribution. The applicant must provide the non-Federal share of the net project cost in cash or in-kind and must document in its application the source of the non-Federal match. Eligible sources of non-Federal match are detailed in FTA Circular 6100.1E.

3. Eligible Projects

This notice solicits applications in two topical areas: (a) projects that develop novel operational concepts and/or demonstrate innovations that improve mobility and enhance the rider

experience, with a focus on innovative service delivery models, creative financing, novel partnerships, integrated payment solutions, or other innovative solutions; and (b) projects that develop software to facilitate the provision of demand-response public transportation service that dispatches public transportation fleet vehicles through riders' mobile devices or other advanced means. Applicants must clearly indicate on the supplemental form the topical area for which the application is seeking funding.

FTA seeks applications for projects that enhance the current state of mobility innovation research or build on existing successful projects and partnership efforts, including previously awarded Enhancing Mobility Innovation projects.

For illustrative purposes, some examples of project research areas include novel data approaches for improved service delivery; data-driven tools and strategies to predict and influence traveler behavior; projects that encourage climate-smart choices and/or provide personalized mobility options to travelers; payment systems and solutions that enhance integrated mobility management and interoperability across a variety of modes; mobility payment integration with dynamic pricing strategies; and novel approaches for providing more effective transportation and mobility options in underserved communities.

a. Concepts Development and/or Demonstration Projects

For this topical area, eligible activities may include all activities that advance promising technologies, practices, and strategies and accelerate innovations in mobility for transit, including, but not limited to, planning, acquiring essential equipment or services, project implementation, and evaluating project results.

For projects that develop novel operational concepts without a demonstration component, eligible project activities may include data collection, technology scanning and feasibility analysis, engagement and outreach, benefits and costs analysis, and modeling forecasts of proposed concepts' climate and equity impacts.

b. Software Development Projects

For this topical area, eligible activities may include establishing user needs, defining system requirements, development, validation, and verification of the software, modeling, and simulation, and/or pilot implementation with a software solution that can be demonstrated to

FTA. Software products developed will be subject to the provisions of FTA's most recent Master Agreement available at <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements> and may be disseminated to public transit agencies for their use. Software developed under this program should be interoperable, adaptable, secure, and able to be seamlessly integrated into other transportation and transit management systems. The project team should also consider how the development effort supports the development or use of open standards, specifications, or protocols. FTA will evaluate the potential for software developed under this NOFO to be shared for use by public transportation agencies.

FTA intends to advance innovations that are of national significance and can benefit transit agencies, cities, and communities across the United States. As such, project teams should consider how to structure development efforts to ensure the resulting research outputs are broadly relevant and can lead to adoption or use by other transit agencies or transportation providers.

D. Application and Submission Information

1. Address To Request Application

Applications must be submitted electronically through *GRANTS.GOV*. General information for submitting applications through *GRANTS.GOV* can be found at <https://www.transit.dot.gov/howtoapply>. Applications must be made using the Standard Form 424 (SF-424), which can be downloaded from *GRANTS.GOV*. The supplemental form for the FY 2024 Enhancing Mobility Innovation NOFO and the project overview template can be downloaded from *GRANTS.GOV* or the FTA website at <https://www.transit.dot.gov/funding/grants/EMI>. Failure to submit the information as requested can delay review or disqualify the application.

2. Content and Form of Application Submission

a. Proposal Submission

General information for submitting applications, along with specific instructions for the forms and attachments required for submission, can be found at *GRANTS.GOV*. A complete proposal submission must consist of (1) the SF-424 Application for Federal Assistance, (2) the supplemental form, and (3) the project overview in Microsoft Word, PDF, or a compatible file format that addresses the required elements contained in this notice. The

project overview should be in the format outlined in the “Application Content” section. The supplemental form, project overview, and any supporting documents must be attached to the “Attachments” section of the SF-424. The application must include responses to all sections of the SF-424 Application for Federal Assistance, the supplemental form, and the project overview unless indicated as optional.

The information on the supplemental form and project overview will be used to determine applicant and project eligibility for the program and to evaluate the proposal against the selection criteria described in Section E of this notice. If an applicant chooses to apply for both topical areas ((a) concepts development and/or demonstration, and (b) software development), the applicant must submit separate proposals for individual consideration by FTA, with a separate SF-424 supplemental form, and project overview for each project area.

FTA will accept only one supplemental form and one project overview per SF-424 submission. Applicants may attach additional supporting information to the SF-424 submission, including but not limited to letters of support, project budgets, visual aids, excerpts from relevant planning documents, or project narratives. Any supporting documentation must be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as applicant name, Federal amount requested, local match amount, and description of areas served may be requested in varying degrees of detail on both the SF-424 and supplemental form. Applicants must fill in all fields unless stated otherwise on the forms. If information is copied into the supplemental form from another source, applicants should verify that pasted text is fully captured on the supplemental form and has not been truncated by the character limits built into the form. Applicants should use both the “Check Package for Errors” and the “Validate Form” validation buttons on both forms to check all required fields on the forms and ensure that the Federal and local amounts specified are consistent.

b. Application Content

The SF-424 Application for Federal Assistance and the supplemental form will prompt applicants for required information, including:

1. Applicant name.

2. Unique entity identifier (UEI) (generated by *SAM.GOV*)

3. Key contact information (including name, address, email address, and phone).

4. Congressional district(s) where the project will take place.

5. Project information (including title, executive summary, and type).

6. Information on areas served by the project, including the current state of public transportation and mobility in the area served.

7. A detailed description of the project and how it will either (a) advance innovative mobility technologies that focus on innovative service delivery models, creative financing, novel partnerships, integrated payment solutions, or other innovative solutions or (b) develop interoperable software solutions to facilitate the provision of demand-response public transportation service.

8. A description of each innovative technology, practice, or strategy proposed as part of the project scope.

9. A description of project benefits, including the national significance of the project to advance innovative, carefree mobility solutions and how the project may advance climate-smart solutions and equity.

10. Information on any project partners, their roles, and anticipated contributions.

11. A description of the project implementation strategy, including a description of the approach to data, data access, and project evaluation, and how the project will support the Department of Transportation’s public data access requirements.

12. A description of the technical, legal, and financial capacity of the applicant and all named partners.

13. A detailed project budget specifying Federal and local share. Project budgets should show how different funding sources will share in each activity and present the data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for, has been awarded, or intends to use. Funding sources should be grouped into three categories: non-Federal, current application Enhancing Mobility Innovation, and other Federal with specific amounts for each funding source.

14. Information on source of matching funds for the project’s local cost share.

15. A description of the scalability of the project, including minimum Federal Funds necessary to complete the project in case of limited funding.

16. A detailed project timeline, including all proposed project milestones.

The project overview should be submitted as a one-page document in Microsoft Word, PDF, or other compatible file format and should follow the template that can be downloaded at *GRANTS.GOV* and <https://www.transit.dot.gov/funding/grants/EMI>. The project overview should include a header with the project title and lead applicant and a brief description (two to three sentences or bullet points) of the following four project areas: (1) innovation, including how the proposed innovative technology, strategy, or practice compares to state of the art; (2) benefits and potential impact; (3) team and partners, including the roles of key personnel and project partners; and (4) approach, including expected project accomplishments and proposed measures of success.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to (1) be registered in *SAM.GOV* before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to always maintain an active *SAM.GOV* registration with current information while the applicant has an active Federal award, application, or plan under consideration by FTA. FTA may not award until the applicant has complied with all applicable unique entity identifier and *SAM.GOV* requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. These requirements do not apply if the applicant has an exception approved by FTA or the U.S. Office of Management and Budget under 2 CFR 25.110(c) or (d).

SAM.GOV registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit <https://www.sam.gov>.

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. Eastern Time on August 30, 2024. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will only be considered

under extraordinary circumstances and not under the applicant's control. Mail, fax, and email submissions will not be accepted.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website. Deadlines will not be extended due to scheduled website maintenance.

Within 48 hours after submitting an electronic application, the applicant should receive an email message from *GRANTS.GOV* with confirmation of successful transmission. If a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, the applicant must include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the registration process on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) registration in SAM must be renewed annually, and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submission. If the applicant encounters system problems or technical difficulties using the *GRANTS.GOV* website, the applicant should address those technical issues to *GRANTS.GOV*.

5. Funding Restrictions

Refer to Section C.3., Eligible Projects, for information on allowable activities. Allowable direct and indirect expenses must be consistent with the Governmentwide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1E (<https://www.transit.dot.gov/research-innovation/circular-5010>).

Funds available under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred

prior to FTA issuing pre-award authority for selected projects.

6. Scaled Funding Options

Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant indicates that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project budget would be affected by a reduced award. FTA may award a lesser amount regardless of whether a scaled option is provided.

E. Application Review Information

1. Criteria

Projects will be evaluated primarily on the responses provided in the supplemental form and project overview. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. FTA will evaluate proposals based on the criteria described in this notice.

If an applicant is proposing to deploy autonomous vehicles or other innovative motor vehicle technology, the application should demonstrate that all vehicles will comply with applicable safety requirements, including those administered by the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA). Specifically, the application should show that vehicles acquired for the proposed project will comply with applicable Federal Motor Vehicle Safety Standards (FMVSS) and Federal Motor Carrier Safety Regulations (FMCSR). If the vehicles do not comply, the application should either (1) show that the vehicles and their proposed operations are within the scope of an exemption or waiver that has already been granted by NHTSA, FMCSA, or both agencies or (2) directly address whether the project will require exemptions or waivers from the FMVSS, FMCSR, or any other regulation and, if the project will require exemptions or waivers, present a plan for obtaining them.

a. Demonstration of Innovation

FTA is seeking projects focused on the next iteration of the most promising technologies, practices, and strategies to

accelerate innovations in mobility for public transportation. Projects will be evaluated on the extent to which they develop and deploy novel, innovative, or transformative mobility technologies and solutions and advance the state of the practice. A proposal should clearly identify a specific innovative premise and should provide a description of how it compares to the current state of the art. FTA will assess the extent to which the applicant uses innovative strategies, including (i) innovative technologies, (ii) innovative financing, or (iii) innovative operations to advance mobility innovation that produces climate-smart and equitable outcomes.

b. Demonstration of Benefits

The application should demonstrate how the proposed project will accelerate the transit industry's ability to implement new technologies, operational innovations, approaches, or service models that support safe, equitable, and climate-smart mobility options for all travelers. FTA will evaluate proposals based on their capacity to accelerate the development and adoption of innovative technologies, practices, and service models to improve mobility and enhance the rider experience, better position transit agencies to adapt to unprecedented operational challenges, and meet evolving traveler expectations.

FTA will consider the extent to which each proposal will advance the transit industry by producing knowledge of national significance that advances the state of the practice for public transportation in the United States; advances technologies, innovations, practices, or partnership models that are relevant and replicable; leverages private sector innovation; advances robust, replicable business models and sustainable public private partnerships; and advances tools or approaches that enable transportation system carbon reductions and promote equity.

FTA welcomes integrated mobility projects that embrace a holistic view of multimodal mobility that centers and supports public transportation. FTA encourages applicants to consider integrated mobility from the perspectives of system owners, operators, and travelers. FTA seeks projects that produce novel, bold, and yet realistic concepts to accelerate the transformation of integrated mobility and public transportation, influence traveler behavior, and produce meaningful and lasting impacts on climate and equity.

For software development projects, FTA will consider the extent to which the development results in robust,

interoperable, and adaptable software-based solutions for demand-response transit service dispatched through riders' mobile devices or other advanced means. Additionally, software development projects will be assessed on the extent to which the development effort will support strategies for the use of open standards, specifications, or protocols and would permit the software to be shared for use by public transportation agencies.

c. Project Team and Partnerships

The application should identify the team that will carry out the proposed project, including key personnel and all project partners. FTA will evaluate the extent to which the project team has the necessary expertise, collaboration, and capacity to successfully implement the project and to which the project contains strong, cohesive partnerships.

Applicants must identify all project partners and their specific roles. Applications should describe how project partners plan to work collaboratively and should show evidence of strong commitment and cooperation among project partners through letters of support or agreements among the partners. Applications should describe how partners will participate in each aspect of project planning, implementation, and evaluation. FTA will also evaluate the experience, capacity, and demonstrated commitment of the named project partners as pertains to successful implementation of the proposed project. Applicants are advised to submit information on the partners' qualifications and experience as a part of the application. Applicants that are not providers of public transportation are encouraged to identify in the application at least one provider of public transportation as a project partner. Entities who will be involved in the project but not named in the application will be required to be selected through a competitive procurement unless an exception to competition requirements applies.

d. Local Financial Commitment

Applicants must identify the source of the non-Federal cost share and describe whether such funds are currently available for the project or will need to be secured if the project is selected for funding. FTA will consider the availability of the non-Federal cost share as evidence of the applicant's financial commitment to the project, including whether non-Federal funds have already been made available or reserved. Applicants should submit evidence of the availability of funds for

the project, for example, by including a board resolution, a letter of support from the State, a budget document highlighting the line item or section committing funds to the proposed project, or other documentation of the source of non-Federal funds.

e. Project Implementation Strategy

The application should explain the applicant's approach to carrying out the project, including all necessary project milestones and the overall project timeline. Projects will be evaluated based on the extent to which the applicant's proposed implementation plans are reasonable and complete. To assess whether the implementation plans are reasonable and complete, FTA will review and consider the project milestones, timeline, budget, risks to implementation, and how well the project implementation plan addresses these risks. FTA will also consider if the project's implementation strategy addresses how the project will support data access and sharing of project results and project evaluation against mobility-specific metrics. For projects that will require formal coordination, approvals, or permits from government agencies or project partners, the applicant must demonstrate coordination with these organizations and their support for the project, such as through letters of support.

f. Technical, Legal, and Financial Capacity

FTA will evaluate proposals on the capacity of the project applicant and all partners to successfully execute the project. Demonstrated experience by the project applicant or project partners in successfully implementing a mobility innovation development and demonstration project will be considered.

FTA may review relevant oversight assessments and records to determine whether the applicant has any outstanding legal, technical, or financial issues that would affect the proposed project's outcome. Applicants with outstanding legal, technical, or financial compliance issues from an FTA compliance review or grant-related Single Audit finding must explain how corrective actions will mitigate negative impacts on the proposed project.

For applications that include named project partners, FTA will also consider the technical, legal, and financial capacity of the partner to successfully implement the proposed project. Applicants are advised to submit information on the partners' qualifications and experience as part of the application.

2. Review and Selection Process

A technical evaluation committee made up of federal staff will evaluate proposals based on the published evaluation criteria. FTA may request additional information from applicants if necessary. Based on the findings of the technical evaluation committee, the FTA Administrator will determine the final selection of projects for funding.

Consistent with Executive Order 13990, which aims to promote clean energy, conservation, and environmental justice; emphasizes scientific integrity and evidence-based decision-making; and aligns with goals to mitigate climate change and prioritize environmental sustainability, the selecting official will consider applications that may promote these key priorities as part of the application review.

In determining the allocation of program funds, FTA may consider geographic diversity, diversity in the size of the grant recipients receiving funding, or the applicant's receipt of other competitive awards, among other factors. FTA may also consider capping the amount a single applicant may receive.

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance Integrity Information System (FAPIIS) accessible through SAM. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in the Office of Management and Budget's Uniform Requirements for Federal Awards (2 CFR 200.205).

F. Federal Award Administration Information

1. Federal Award Notices

FTA will announce the final project selections on the FTA website. Due to funding limitations, applicants that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed projects are still viable and can be completed with the amount awarded.

2. Administrative and National Policy Requirements

a. Pre-Award Authority

At the time the project selections are announced, FTA may extend pre-award authority for the selected projects. There is no blanket pre-award authority for these projects before announcement. FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not consider requests for pre-award authority for competitive funds until after projects are selected, and additional Federal requirements must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the most recent Apportionments, Allocations, and Program Information Notice at <https://www.transit.dot.gov/funding/apportionments>.

b. Cooperative Agreement Requirements

If selected, awardees will apply for a cooperative agreement through FTA's Transit Award Management System (TrAMS). Successful applicants must be prepared to submit a complete statement of work and application in TrAMS within 90 days of notification of award. All recipients must follow the requirements of FTA Circular 6100.1E. Technical assistance regarding these requirements is available from FTA.

Awardees must disburse funds from their cooperative agreement using DOT's Delphi system. Drawdowns using ECHO are prohibited. FTA staff are available to assist awardees in gaining access to and using the Delphi system.

c. Buy America and Domestic Preferences for Infrastructure Projects

As expressed in Executive Order 14005, "Ensuring the Future Is Made in All of America by All of America's Workers" (86 FR 7475), the Executive Branch should maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Therefore, all capital procurements must comply with FTA's Buy America requirements (49 U.S.C. 5323(j)), which require that all iron, steel, and manufactured products be produced in the United States. In addition, any award must comply with the Build America, Buy America Act (BABA) (Pub. L. 117–58, sections 70901–27). BABA provides that none of the funds provided under an award made pursuant to this notice may be used for a project unless all iron, steel, manufactured products, and construction materials are produced in the United States. FTA's Buy America requirements are consistent with BABA

requirements for iron, steel, and manufactured products.

Any proposal that will require a waiver of any domestic preference standard must identify the items for which a waiver will be sought in the application. Applicants should not proceed with the expectation that waivers will be granted.

d. Disadvantaged Business Enterprise

FTA requires that its recipients receiving planning, capital, or operating assistance that will award prime contracts exceeding \$250,000 in FTA funds in a Federal fiscal year comply with the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26). If an applicant also receives FTA planning, capital, or operating assistance, it should expect to include any funds awarded, excluding those to be used for vehicle procurements, in setting its overall DBE goal. Note, however, that projects, including vehicle procurements, remain subject to the DBE program regulations.

e. Standard Assurances

If an applicant receives an award, the applicant must assure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA award. The applicant acknowledges that it will be under a continuing obligation to comply with the terms and conditions of the agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The most recent Federal requirements will apply to the project unless FTA issues a written determination otherwise. The applicant must submit the most recent FTA Certifications and Assurances before receiving an award if it does not have current certifications on file.

f. Data Access and Data Sharing

FTA seeks to improve America's communities through public transportation by sharing digital data or source code collected or developed through its research with the public. This allows research organizations, public transportation agencies, state DOTs, and others to learn from and expand upon the insights developed from FTA-funded research.

An award made pursuant to this NOFO will be subject to the latest version of FTA's Master Agreement (available at <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>), including Section 17 Patent Rights and Section 18 Rights in Data and Copyrights. All work funded under this NOFO must follow the Department's data collection and sharing policies outlined in the DOT Public Access Plan at: <https://www.transportation.gov/mission/open/official-dot-public-access-plan-v11>. Recipients are required to include these obligations in any sub-awards or other related funding agreements.

Public Data Access requirements include developing a Data Management Plan (DMP) and submitting the DMP for FTA review. A DMP is a document that describes how recipients plan to handle digital datasets, software, or code generated over the course of a research project pursuant to Federal and Departmental requirements. A DMP must be provided as a condition of receiving FTA funds under the Section 5312 Research Program and should adequately identify (1) the data to be collected, (2) how the data will further the goals of this effort, (3) how the data will be made accessible, and (4) how the data will be stored. DMPs can be updated over time if the scope of the project or the type of data that will be collected changes.

FTA staff is available to assist recipients with complying with public data access requirements.

g. External Communications

Recipients must communicate with their FTA project manager prior to engaging in any external communications regarding their project. This includes any work developing news or magazine stories with media organizations, including print, video, online, or otherwise. Additionally, the FTA project manager must be notified if project information, including results and metrics, will be shared during a webinar or other presentation open to the public, produced either by the recipient itself or another organization. Recipients should consult with their FTA project manager at the beginning of their agreement to discuss and plan any external communications about their project.

h. Independent Evaluation

Projects funded under this announcement may be subject to evaluation by an independent evaluator selected by FTA. Recipients may be required to coordinate with the

independent evaluator to assist in developing an evaluation plan and collecting, storing, and managing data required to fulfill that evaluation plan.

i. Mobility Metrics

Projects funded under this notice will be required to support the efforts of FTA or its designee to evaluate the project and its outcomes against mobility-specific metrics. FTA will work with the project team to implement evaluation plans that are consistent with FTA's mobility-specific metrics as detailed in the FTA report, Mobility Performance Metrics (MPM) For Integrated Mobility and Beyond (February 2020), available at <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/147791/mobility-performance-metrics-integrated-mobility-and-beyond-fta-report-no-0152.pdf>.

j. Software Provisions

Any software developed as a part of this solicitation will be subject to provisions of FTA's Master Agreement related to patent rights and rights in data and copyrights and may be disseminated to public transit agencies for their use.

3. Reporting

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system, TrAMS. Applicants should include any goals, targets, and indicators referenced in their application in the Executive Summary of the TrAMS application.

As part of completing the annual certifications and assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceed \$10,000,000 for any period during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

4. Termination for Failure To Make Progress on an Award

After providing written notice to the recipient of a project selected for funding, FTA may withdraw its support for the selected project if a cooperative agreement has not yet been awarded or suspend or terminate all or any part of the federal assistance for the award if

the recipient has failed to make reasonable progress implementing the project.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact Natalie Covill-Fontaine, FTA Office of Research, Demonstration, and Innovation, by phone at 202-366-7564 or by email at n.covillfontaine@dot.gov. A TDD is available for individuals who are deaf or hard of hearing at 800-877-8339. In addition, FTA may post answers to questions and requests for clarifications on FTA's website at <https://www.transit.dot.gov/funding/grants/EMI>. To ensure applicants receive accurate information about eligibility or the program, applicants are encouraged to contact FTA directly rather than through intermediaries or third parties. FTA staff may also conduct briefings on the FY 2024 competitive grants selection and award process upon request.

For issues with *GRANTS.GOV*, please contact *GRANTS.GOV* by phone at 1-800-518-4726 or by email at support@grants.gov.

H. Other Information

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

The Department may share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives. All applications and supporting materials submitted to FTA will become the records of FTA. If an applicant submits information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant must provide that information in a separate document, which the applicant may cross-reference from the application narrative or other portions of the application. For the separate document containing confidential information, the applicant must state on the cover of the document that it "Contains Confidential Business Information (CBI)," mark each page that contains confidential information with "CBI," and highlight or otherwise identify the confidential content on each page. FTA will protect confidential information, complying with these requirements to the extent required under applicable law. If FTA receives a Freedom of Information Act (FOIA) request for the information that the applicant has marked in accordance with this section, FTA will follow the procedures described in U.S. DOT's

FOIA regulation at 49 CFR 7.29. Only information that is in the separate document, marked in accordance with this section, and ultimately determined to be confidential under section 7.29 will be exempt from disclosure under FOIA.

Veronica Vanterpool,
Acting Administrator.

[FR Doc. 2024-14429 Filed 6-28-24; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT-OST-2023-0049]

Opportunities and Challenges of Artificial Intelligence (AI) in Transportation; Request for Information; Extension of Comment Period

AGENCY: Department of Transportation (DOT).

ACTION: Notice; request for information (RFI); extension of comment period.

SUMMARY: On May 3, 2024, the Office of the Assistant Secretary for Research and Technology (OST-R) of the Department of Transportation (DOT) published in the **Federal Register** a request for information seeking comments on the potential applications of artificial intelligence (AI) in transportation, as well as emerging challenges and opportunities in creating and deploying AI technologies in applications across all modes of transportation. That request established a 60-day comment period closing on July 2, 2024. DOT is extending the public comment period until August 1, 2024.

DATES: The comment period for the notice published on May 3, 2024 (89 FR 36848) is extended. The due date for submitting comments is August 1, 2024.

ADDRESSES: Please submit any written comments to Docket Number DOT-OST-2024-0049 electronically through the Federal eRulemaking Portal at <https://regulations.gov>. Go to <https://regulations.gov> and select "Department of Transportation (DOT)" from the agency menu to submit or view public comments. Note that, except as provided below, all submissions received, including any personal information provided, will be posted without change and will be available to the public on <https://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at <https://www.transportation.gov/privacy>. **FOR FURTHER INFORMATION CONTACT:** For further information contact Mr. Timothy

A. Klein, Director, Technology Policy and Outreach, Office of the Assistant Secretary for Research and Technology (202–366–0075) or by email at timothy.klein@dot.gov.

SUPPLEMENTARY INFORMATION: DOT published a request for information in the **Federal Register** on May 3, 2024 (89 FR 36848) seeking comments on the potential applications of artificial intelligence (AI) in transportation, as well as emerging challenges and opportunities in creating and deploying AI technologies in applications across all modes of transportation. The public comment period is extended to August 1, 2024. All other information in the notice from May 3, 2024 remains the same.

Confidential Business Information: Do not submit information disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information “CBI”) to *Regulations.gov*. Comments submitted through *Regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted.

Issued in Washington, DC, on June 26, 2024.

Robert C. Hampshire,

Deputy Assistant Secretary for Research and Technology.

[FR Doc. 2024–14436 Filed 6–28–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Information Collection and Request for Public Comment

ACTION: Notice and request for public comment.

SUMMARY: The U.S. Department of the Treasury, as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act (PRA) of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury, is soliciting comments concerning the Capital Magnet Fund (CMF) reporting and record retention requirements of the CMF Annual Performance Report (CMF Performance Report). The CMF Performance Report is

an online form submitted through the CDFI Fund’s Awards Management Information System (AMIS).

DATES: Written comments must be received on or before August 30, 2024. Comments can be submitted electronically via the e-Rulemaking Portal: www.regulations.gov.

ADDRESSES: You may submit comments concerning the CMF Performance Report via the Federal e-Rulemaking Portal at www.regulations.gov. Follow the instructions on the website for the submission of comments. In general, all comments will be available for inspection at www.regulations.gov. Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure. Information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund’s website at <http://www.cdfifund.gov>.

FOR FURTHER INFORMATION CONTACT: Heather Hunt, OCME Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington DC 20220, (202) 453–2044 (not a toll-free number). Other information regarding the CDFI Fund and its programs may be obtained on the CDFI Fund website at <https://www.cdfifund.gov>. The CMF Performance Report Data Points are provided to aid the public in providing comments requested by this notice, and presents the information proposed to be collected in the online CMF Performance Report. Changes being made to the CMF Performance Report are identified in the second column of the data point guidance, including proposed deletions, additions, and updates. The CMF Performance Report Data Points may be obtained from the CMF compliance page of the CDFI Fund website at <https://www.cdfifund.gov/programs-training/programs/cmf/compliance-step>.

SUPPLEMENTARY INFORMATION:

Title: Capital Magnet Fund Performance Report.

OMB Number: 1559–NEW.

Type of Review: Regular Review.

Abstract: The Capital Magnet Fund was established through the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289), as a competitive grant program administered by the CDFI Fund. Through CMF, the CDFI Fund provides financial assistance grants to Certified Community Development Financial Institutions (CDFIs) and qualified Nonprofit Organizations that have the

development or management of Affordable Housing, as defined in 12 CFR 1807, as one of their principal purposes. Capitalized terms not defined in this Notice (other than titles) have the meaning set forth in the CMF Interim Rule (12 CFR 1807). CMF Awards must be used to attract private financing for and increase investment in: (i) the Development, Preservation, Rehabilitation, and Purchase of Affordable Housing for primarily Extremely Low-, Very Low-, and Low-Income Families; and (ii) Economic Development Activities which, in conjunction with Affordable Housing Activities, will implement a Concerted Strategy to stabilize or revitalize a Low-Income Area or an Underserved Rural Area. CMF Award Recipients enter into Assistance Agreements with the CDFI Fund that set forth required terms and conditions of the Award, including reporting and data collection requirements. The Assistance Agreement requires the submission of an annual CMF Performance Report. The information collected in the CMF Performance Report is reviewed to ensure the Recipient’s compliance with its Performance Goals and contractual obligations, as well as the overall performance of the program. Data collected through the CMF Performance Report consists of three categories of data: (1) mandatory data points, (2) conditionally required data points based on project characteristics, financing type or other condition, and (3) optional data points. For most compliance measures, AMIS calculates whether the Recipient is compliant or noncompliant based on the data reported into the system. When the system determines that a noncompliance has occurred, the Recipient is required to complete an explanation of noncompliance prior to submitting the report to the CDFI Fund. This notice requests PRA approval for the CMF Performance Report. This report is a modified version of the previous CMF Performance Report, which was under OMB Number 1559–0036.

Estimated Number of Respondents: 330.

Estimated Annual Time per Respondent: 20 hours.

Estimated Annual Burden Hours: 6,600 hours.

Request for Comments: Comments submitted in response to this Notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund website at <https://www.cdfifund.gov>. The CDFI Fund is seeking input on the

content of the proposed CMF Performance Report with regard to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of collecting the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Authority: Pub. L. 110–289, 12 CFR 1807.

Pravina Raghavan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2024–14440 Filed 6–28–24; 8:45 am]

BILLING CODE 4810–70–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 Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of forty-four entities and five individuals 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 and entities 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 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 Assistant Director for Compliance, 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 June 25, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and entities are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals:

1. NAJIBI, Seyyed Mohammad Mosanna'i (Arabic: سيد محمد مثنائي نجيبى) (a.k.a. NAJIBI, Sayyed Mohammad Masnayi; a.k.a. NAJIBI, Seyyed Mohammad Masnaei; a.k.a. YILMAZ, Can), Iran; Turkey; DOB 11 Sep 1974; nationality Iran; alt. nationality Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport V52954918 (Iran); alt. Passport U23145839 (Turkey); National ID No. 1372111883 (Iran); alt. National ID No. 13167145446 (Turkey) (individual) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079 (E.O. 13224), as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. JALALIAN, Ramin (a.k.a. JALALAYAN, Ramin; a.k.a. JLALIYAN, Ramin), Tehran, Iran; Dubai, United Arab Emirates; DOB 09 Jun 1985; POB Tehran, Iran; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 0079844758 (Iran) (individual) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. NOURIAN, Siavash (Arabic: سیاوش نوریان) (a.k.a. NURIAN, Siavosh), Iran; DOB 26 Mar 1959; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport Z64904229 (Iran); National ID No. 3991954850 (Iran) (individual) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND

ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. SEIFI, Asadollah (a.k.a. SEIFY, Asadollah; a.k.a. SEYFI, Esdaleh), Pasdaran Golestan 4 P 73 Vahed 6, Tehran, Iran; DOB 04 Apr 1965; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport P61246374 (Iran); National ID No. 1465247467 (Iran) (individual) [SDGT] [IFSR] (Linked To: ATLAS EXCHANGE; Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. MIR MOHAMMAD ALI, Seyyed Reza (Arabic: *سید رضی میر محمد علی*) (a.k.a. ALI, Seyed Razi Mir Mohammad), Iran; DOB 05 Sep 1977; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport Y39352996 (Iran) expires 20 Oct 2021; alt. Passport R60940480 (Iran); National ID No. 0059123605 (Iran) (individual) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Entities:

1. HEKMAT IRANIAN EXCHANGE AND FOREIGN CURRENCY SERVICES COMPANY, First Floor, No. 6, (27th) Shahideh Rachel Korrie Street, Zagros Street, Tehran 1514935663, Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 02 Jan 2016; National ID No. 14005505784 (Iran); Company Number 484910 (Iran) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. OMID SEPAH EXCHANGE COMPANY, 1st Floor, No. 2, Emad Khorasani Dead End, Derakhti Street, Derakhti - (West) Qods Town, Tehran 1468813111, Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 14 May 2005; National ID No. 10102865943 (Iran); Company Number 245956 (Iran); Registration Number 411111396931 (Iran)

[SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. SEYYED MOHAMMAD MOSANNA'I NAJIBI AND PARTNERS COMPANY (Arabic: شرکت سید محمد مثنایی نجیبی و شرکا) (a.k.a. SADAF EXCHANGE; a.k.a. SEYYED MOHAMMAD MASNAEI NAJIBI & CO. COMPANY; a.k.a. SEYYED MOHAMMAD MASNAEI NAJIBI AND CO. COMPANY), Ground Floor, No. 48, Pasdaran Street, 5th Dashtestan Alley, Ghoba Neighborhood, Tehran 1947818313, Iran; Website sadafexchange.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Dec 2012; National ID No. 10320837227 (Iran); Registration Number 432329 (Iran) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. BURREN CO., LIMITED (Chinese Traditional: 布林有限公司), Unit 811 Beverly Commercial Centre, 87-105 Chatham Road South, Tsim Sha Tsui, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 30 Dec 2019; Company Number 2906471 (Hong Kong); Business Registration Number 71504417 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. GAINON CO., LIMITED (Chinese Traditional: 蓋倫有限公司), Room 1201, 12/F Tai Sang Bank Building 130-132, Des Voeux Road, Central Hong Kong, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 17 Sep 2021; Company Number 3086858 (Hong Kong); Business Registration Number 73378347 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

6. HERMEX INTERNATIONAL CORP., Trust Company Complex, Ajeltake Island, Majuro 96960, Marshall Islands; Website hermexint.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 05 Apr 2022; Registration Number 113880 (Marshall Islands) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

7. MEISHUR LIMITED (Chinese Traditional: 梅樹有限公司), Rm 1502 Easey Coml Bldg Wan Chai, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 24 Feb 2023; Company Number 3236876 (Hong Kong); Business Registration Number 74892699 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

8. RELAN LIMITED (Chinese Traditional: 熱藍有限公司), Room 1508, 15/F., Office Tower Two, Grand Plaza, 625 Nathan Road, Kowloon, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 15 Mar 2022; Company Number 3135115 (Hong Kong); Business Registration Number 73866245 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

9. ROSLAMI LIMITED (Chinese Traditional: 羅斯拉有限公司), Unit 1307 Beverly Commercial Centre, 87-105 Chatham Road South, Tsim Sha Tsui, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 27 Mar 2023; Company Number 3256156 (Hong Kong); Business Registration Number 75086221 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND

ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

10. SAISAIPIEN CO., LTD (a.k.a. NOVELUCK TRADING LIMITED), 1306, 13/F, Loki Centre, 133-139 Wan Chai Road, Wan Chai, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 22 Oct 2021; Company Number 2880358 (Hong Kong); Business Registration Number 73466077 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

11. SUESIAN CO., LIMITED (Chinese Traditional: 雪絲安有限公司), Rm 1201, 12/F Tai Sang Bank Bldg, 130-132 Des Voeux Rd, Central Hong Kong, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 08 Oct 2019; Company Number 2880358 (Hong Kong); Business Registration Number 71293913 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

12. TURPAMI LIMITED (Chinese Traditional: 塗爾潘有限公司), Unit 1307 Beverly Commercial Centre, 87-105 Chatham Road South, Tsim Sha Tsui, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 17 Mar 2023; Company Number 3248858 (Hong Kong); Business Registration Number 75012967 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

13. XASTER CO., LIMITED, Rm 205 Unit X 2/F, Valiant Indl Ctr, Sha Tin, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 25 Oct 2022; Company Number 3201983 (Hong Kong); Business Registration Number 74540311 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support

for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

14. DELAITE TRADING CO., LIMITED, 705A, Silvercord Tower 2, 30 Canton Road, Tsim Sha Tsui, Kln, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 31 Mar 2017; Company Number 2517535 (Hong Kong); Registration Number 67574296 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

15. JOCWA CO., LIMITED, Flat 1512, 15/F, Lucky Centre, No. 165-171 Wanchai Road, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 Feb 2022; Company Number 3129056 (Hong Kong); Registration Number 73805322 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

16. TENGLAN LIMITED, Flat 1512, 15/F, Lucky Centre, No. 165-171 Wanchai Road, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 27 Jan 2022; Company Number 3125074 (Hong Kong); Registration Number 73764990 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

17. JIANGKANG FOOD LIMITED (f.k.a. CHONGMINGDAO INTERNATIONAL TRADING CO., LIMITED), Room 1-1, 4/F, Golden Dragon Industrial Center Phase 2, 162-170 Dalian Pai Road, Kwai Chung, New Territories, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 22 Jun 2020; Company Number 2953975 (Hong Kong); Business Registration Number 71987776 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

18. KUWAN CO., LIMITED, Flat 1512, 15/F, Lucky Centre, No. 165-171 Wan Chai Road, Wan Chai, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 11 Mar 2022; Company Number 3134417 (Hong Kong); Business Registration Number 73859208 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

19. SINO TRADE CO. LTD., Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 Mar 2019; Company Number 2802031 (Hong Kong); Business Registration Number 70442294 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

20. ATVANTIC GOODS WHOLESALERS L.L.C, 1901-02 Smart Creation Business Center, Damac Executive Heights, Business Bay, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 907900 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

21. COPEZZI INDUSTRIAL CO. LIMITED, Rm 023, 9/F Blk G, Kwai Shing Ind Bldg (Stage 2) 42-46 Tai Lin Pai Rd, Kwai Chung Nt., Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Company Number 2961310 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support

for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

22. FENGXIAN INTERNATIONAL TRADING AND SERVICES CO LIMITED, Flat H29 1/F Phase 2 Kwai Shing Ind Bldg No 42-46 Tai Lin Pai, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 24 Jun 2020; Company Number 2954825 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

23. GOLDEN STARS KIYMETLI MADENLER TEKSTIL SANAYI TICARET LIMITED SIRKETI (a.k.a. DEMIR SARRAFIYE), Taya Hatun Mah. Tigcilar Sok. No: 25 D: 322 Rococo Is Merkezi Eminonu, Istanbul, Turkey; Molla Fenari Mah. Serefefendi Sk. Damla Han Blok No:15 Fatih, Istanbul, Turkey; Kapali Carsi Kavaflar Sok. No. 17 Beyazit-Faith, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 768850-0 (Turkey) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

24. LYONED TRADING L.L.C (Arabic: ليونيد للتجارة ش.ذ.م.م), Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 31 May 2022; Registration Number 1067691 (United Arab Emirates); Economic Register Number (CBLS) 11885567 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

25. ANVEX TRADING L.L.C., Deira, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 17 Oct 2022; Business Registration Number 1108341 (United Arab Emirates); Economic Register Number (CBLS) 11955764 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

26. CAREGIS TRADING HK LIMITED, Unit 89, 3/F, Yau Lee Centre, Hoi Yuen Road No. 45, Kwun Tong, Kowloon, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 28 Mar 2023; Company Number 3257848 (Hong Kong); Business Registration Number 75103158 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

27. LZMAR TRADING LIMITED, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 03 Feb 2023; Company Number 3228966 (Hong Kong); Business Registration Number 74812849 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

28. GOLDEN BRONZE LIMITED, Unit 1105, Hua Qin International Building, 340 Queen's Road, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 11 Jan 2021; Company Number 3009479 (Hong Kong); Registration Number 72551978 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

29. PIERA GLOBAL TRADING L.L.C (Arabic: بايرا جلوبال للتجارة ذ.م.م), Bur Dubai Saih Shuaib, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 09 Mar 2021; Registration Number 939546 (United Arab Emirates); Economic Register Number (CBLS) 11635016 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

30. BETHESDA INDUSTRIAL SOLVENTS TRADING, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 Jun 2021; Company Number 1579257 (United Arab Emirates); License 962249 (United Arab Emirates); Chamber of Commerce Number 364804 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

31. COLWICH TRADING L.L.C, Deira Oud Al Muteena 3, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 27 Sep 2022; License 1102340 (United Arab Emirates); Economic Register Number (CBLS) 11944571 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

32. LONG WORTH GOODS WHOLESALERS L.L.C, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 23 Dec 2020; Company Number 1531597 (United Arab Emirates); License 923911 (United Arab Emirates); Chamber of Commerce Number 351258 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

33. MUFFLIN TRADING L.L.C., Al Makhawi Building, M Floor Office #M54, Oud Metha, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 03 Nov 2020; Company Number 1647419 (United Arab Emirates); License 912334 (United Arab

Emirates); Chamber of Commerce Number 348103 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

34. O N C U TRADING L.L.C. (a.k.a. ONCU TRADING L.L.C.), Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 24 Oct 2021; Company Number 1623913 (United Arab Emirates); License 993171 (United Arab Emirates); Chamber of Commerce Number 376875 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

35. CITY BASE GROUP LIMITED, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Mar 2019; Company Number 2805052 (Hong Kong); Business Registration Number 70472756 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

36. KUMU LIMITED (Chinese Traditional: 枯木有限公司), Flat 1512, 15/F, Lucky Centre, No. 165-171 Wan Chai Road, Wan Chai, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 14 Sep 2022; Company Number 3189948 (Hong Kong); Business Registration Number 74418350 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

37. NET TRADING CO., LIMITED, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 20 Feb 2023; Company Number 3234794 (Hong Kong); Business

Registration Number 74871744 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

38. SIAVASH NURIAN AND PARTNERS (Arabic: سیاوش نوریان و شرکاء) (a.k.a. NOURIAN EXCHANGE; a.k.a. SIAVASH NOURIAN & CO. EXCHANGE; a.k.a. SIAVASH NOURIAN AND CO. EXCHANGE), Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 11 Mar 2018; National ID No. 14007482039 (Iran); Commercial Registry Number 524301 (Iran) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

39. ASTORIA STAR HEAVY EQUIPMENT TRADING L.L.C (Arabic: استوریا ستار لتجارة المعدات الثقيلة ش.ذ.م.م), Deira Al Murar, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 11 Oct 2017; Registration Number 792037 (United Arab Emirates); Economic Register Number (CBLS) 10961951 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

40. BRIGHTEN STAR FZE (Arabic: بریتین ستار م م ح), Sharjah, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 08 Dec 2020; Registration Number 19021 (United Arab Emirates); Economic Register Number (CBLS) 11582809 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

41. CHERY STAR CO., LIMITED, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Jan 2021; Company Number 3012179 (Hong Kong) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

42. NASIR SADAQAT GENERAL TRADING L.L.C (Arabic: نصير صداقت للتجارة العامة ش.ذ.م.م), Deira Al Sabkha, Dubai, United Arab Emirates; Plot No. 115-141, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 26 Apr 2012; Registration Number 669600 (United Arab Emirates); Economic Register Number (CBLS) 10881275 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

43. SAHIL AL MAHABA TRADING L.L.C (Arabic: سهل المحبة للتجارة ش.ذ.م.م), Deira Riggat, Al Buteen, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 01 Jun 2020; Registration Number 889628 (United Arab Emirates); Economic Register Number (CBLS) 11514491 (United Arab Emirates) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

44. ATROPARS COMPANY (Arabic: شرکت آتروپارس) (a.k.a. ATRO PARS COMPANY; a.k.a. ATROPARS EXCHANGE; a.k.a. ATROPARS GOLD & JEWELRY MFG; a.k.a. ATROPARS GOLD AND JEWELRY MFG; a.k.a. ATROPARS MFG), No. 17 Samadi St. Farid Asghar St. Vahid Dastjeri Ave, Tehran, Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 10102890879 (Iran); Registration Number 248506 (Iran) [SDGT] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: June 25, 2024.

Bradley T. Smith,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

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Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Part 414, et al.

45 CFR Part 171

21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 414, 425, and 495

Office of the Secretary

45 CFR Part 171

RIN 0955-AA05

21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking

AGENCY: Centers for Medicare & Medicaid Services (CMS) and Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule implements the provision of the 21st Century Cures Act specifying that a health care provider determined by the HHS Inspector General to have committed information blocking shall be referred to the appropriate agency to be subject to appropriate disincentives set forth through notice and comment rulemaking. This rulemaking establishes, for certain health care providers, a set of appropriate disincentives using authorities under applicable Federal law.

DATES: This rule is effective as of July 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Alexander Baker, Office of Policy, Office of the National Coordinator for Health Information Technology (ONC), (202) 690-7151, for general issues.

Elizabeth Holland, Centers for Medicare & Medicaid Services (CMS), (443) 934-2532, for issues related to the Promoting Interoperability Program and the Promoting Interoperability performance category of the Merit-Based Incentive Payment System.

Aryanna Abouzari, Centers for Medicare & Medicaid Services (CMS), (415) 744-3668 or SharedSavingsProgram@cms.hhs.gov, for issues related to the Medicare Shared Savings Program.

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I. Executive Summary

A. Purpose of Regulatory Action

This final rule implements the 21st Century Cures Act (Cures Act) provision for referral of a health care provider (individual or entity), determined by the HHS Office of Inspector General (OIG) to have committed information blocking, “to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking” (section 3022(b)(2)(B) of the Public Health Service Act (PHSA) (42 U.S.C. 300jj–52(b)(2)(B)), as added by section 4004 of the Cures Act (Pub. L. 114–255, Dec. 13, 2016)). This final rule establishes disincentives for certain health care providers (as defined in 45 CFR 171.102) that are also Medicare-enrolled providers or suppliers.

B. Summary of Major Provisions

This final rule establishes disincentives applicable to certain

health care providers (as defined in 45 CFR 171.102), determined by OIG to have committed information blocking (as defined in 45 CFR 171.103), that also are Medicare-enrolled providers or suppliers. This final rule also provides information related to OIG’s investigation of claims of information blocking and referral of a health care provider to an appropriate agency to be subject to appropriate disincentives. Finally, this final rule establishes a process by which information will be shared with the public about health care providers and other actors (health IT developers or other entities offering certified health IT, health information exchanges, and health information networks) that OIG determines have committed information blocking.

Although this final rule does not establish disincentives for all of the health care providers included in the 45 CFR 171.102 definition, the health care providers to whom the disincentives finalized in this rule apply furnish a broad array of services to a significant number of both Medicare beneficiaries and other patients. Thus, this set of disincentives directly advances HHS priorities for deterring information blocking, while also advancing appropriate sharing of electronic health information (EHI) by health care providers¹ to support safer, more coordinated care for all patients.

We believe it is important to establish appropriate disincentives that account for all health care providers that fall within the definition of health care provider at 45 CFR 171.102. While effective deterrence of information blocking can benefit patients by reducing the degree to which health care providers engage in this practice, fewer patients will benefit from these deterrent effects if disincentives have not been established for all health care providers within the definition of health care provider at 45 CFR 171.102. In section IV of the 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking proposed rule (Disincentives Proposed Rule), we requested information on how we could establish disincentives for other health care providers, particularly those health care providers not implicated under the CMS authorities

¹ Except if noted in reference a particular statutory authority or CFR section, we use in this rule “health care provider,” “provider,” and “provider type” as inclusive of individuals and entities that may be characterized for purposes of Medicare enrollment or particular reimbursement policies as providers or suppliers—or both across different contexts such as specific services furnished in particular settings.

we proposed to use to establish disincentives in the proposed rule (88 FR 74966 and 74967).

Consistent with PHSA section 3022(b)(2)(B), in section III.C. of this final rule, CMS has finalized the following disincentives using authorities under applicable Federal law, as follows:

- Under the authority for the Medicare Promoting Interoperability Program in the Social Security Act (SSA), at sections 1886(b)(3)(B)(ix) and 1886(n) for eligible hospitals, and at section 1814(l)(4) for critical access hospitals (CAHs), CMS has finalized that an eligible hospital or CAH is not a meaningful electronic health record (EHR) user in an EHR reporting period if OIG refers, during the calendar year of the reporting period, a determination that the eligible hospital or CAH committed information blocking as defined at 45 CFR 171.103. As a result, an eligible hospital subject to this disincentive will not be able to earn the three quarters of the annual market basket increase associated with qualifying as a meaningful EHR user, and a CAH subject to this disincentive will have its payment reduced to 100 percent of reasonable costs, from the 101 percent of reasonable costs it might have otherwise earned, in an applicable year.

- Under the authority in SSA sections 1848(o)(2)(A) and (D) and 1848(q)(2)(A)(iv) and (B)(iv), for the Promoting Interoperability performance category of the Merit-based Incentive Payment System (MIPS), CMS has finalized that a health care provider defined in 45 CFR 171.102 that is a MIPS eligible clinician (as defined in 42 CFR 414.1305 and including groups) is not a meaningful EHR user in a performance period if OIG refers, during the calendar year of the reporting period, a determination that the MIPS eligible clinician committed information blocking as defined at 45 CFR 171.103. CMS also has finalized that the determination by OIG that a MIPS eligible clinician committed information blocking will result in the MIPS eligible clinician, if required to report on the Promoting Interoperability performance category of MIPS, not earning a score in the performance category (a zero score), which is typically a quarter of the total final composite performance score (a “final score” as defined at 42 CFR 414.1305). CMS has codified this proposal under the definition of meaningful EHR user for MIPS at 42 CFR 414.1305 and added it to the requirements for earning a score for the MIPS Promoting Interoperability

performance category at 42 CFR 414.1375(b).

- Under the authority in SSA section 1899(b)(2)(G) for the Medicare Shared Savings Program (Shared Savings Program), CMS has finalized that a health care provider as defined in 45 CFR 171.102 that is an accountable care organization (ACO), ACO participant, or ACO provider/supplier, if determined by OIG to have committed information blocking as defined at 45 CFR 171.103, may be barred from participating in the Shared Savings Program for at least 1 year (88 FR 74964 and 74965). In this final rule, in consideration of the comments received, CMS has finalized incorporation of an alternative policy discussed in the proposed rule, under which CMS will consider an OIG information blocking determination in light of relevant facts and circumstances before applying a disincentive under the Shared Savings Program, such as denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), denying an ACO's application to participate in the Shared Savings Program if the remedial action is not taken, or terminating an ACO's participation agreement with CMS. This will result in a health care provider being removed from an ACO or prevented from joining an ACO; and in the instance where a health care provider is an ACO, this will prevent the ACO's participation in the Shared Savings Program. The relevant facts and circumstances include the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, whether the provider was previously subject to a disincentive in another program, and other factors.

C. Costs and Benefits

Executive Order 12866 on Regulatory Planning and Review and Executive Order 13563 on Improving Regulation and Regulatory Review direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a “significant regulatory action” as an action that is likely to result in a rule that may: (1)

have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case. The Office of Management and Budget (OMB) has determined that this final rule is not a significant regulatory action, as the potential costs associated with this final rule would not be greater than \$200 million per year, and it does not meet any of the other requirements to be a significant regulatory action.

D. Severability

We are clarifying and emphasizing our intent that if any provision of this final rule is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further action, it shall be severable from this final rule, and from rules and regulations currently in effect, and not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances. If any provision is held to be invalid or unenforceable, the remaining provisions which could function independently, should take effect and be given the maximum effect permitted by law.

Through this rule, we adopt provisions that are intended to and will operate independently of each other, even if each serves the same general purpose or policy goal. Where a provision is necessarily dependent on another, the context generally makes that clear (such as by cross-reference to a particular standard, requirement, condition, or pre-requisite). Where a provision that is dependent on one that is stayed or held invalid or unenforceable, as described in the preceding paragraph, is included in a subparagraph, paragraph, or section within part 171 of 45 CFR or part 414, 425, or 495 of 42 CFR, we intend that

other provisions of such subparagraph(s), paragraph(s), or section(s) that operate independently of the provision stayed or held invalid or unenforceable would remain in effect.

II. Background

A. Statutory Basis

The Cures Act was enacted on December 13, 2016, “[t]o accelerate the discovery, development, and delivery of 21st century cures, and for other purposes” (Pub. L. 114–255, December 16, 2016). Section 4004 of the Cures Act added section 3022 to the PHSA. Section 3022(a)(1) of the PHSA defines information blocking as a practice that, except as required by law or specified by the Secretary pursuant to rulemaking, is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information, and: (1) if the practice is conducted by a health information technology developer, exchange, or network, such developer, exchange, or network knows, or should know, that such practice is likely to interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information; or (2) if the practice is conducted by a health care provider, such health care provider knows that such practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information. Section 3022(a)(3) of the PHSA further provides that the Secretary shall, through rulemaking, identify reasonable and necessary activities that do not constitute information blocking. Section 3022(a)(4) of the PHSA states that the term “information blocking” does not include any practice or conduct occurring prior to the date that is 30 days after December 13, 2016 (the date of the enactment of the Cures Act).² Section 3022(a)(2) of the PHSA describes certain practices that may constitute information blocking.

Section 3022(b)(1) of the PHSA authorizes OIG to investigate information blocking claims. Section 3022(b)(1)(B) of the PHSA authorizes OIG to investigate claims that “a health care provider engaged in information blocking.” Section 3022(b)(2)(B) of the PHSA provides that any health care provider OIG determines to have committed information blocking shall be referred to the appropriate agency to be subject to appropriate disincentives

using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking. Sections 3022(b)(1)(A) and (C) of the PHSA authorize OIG to investigate health information technology (IT) developers of certified health IT or other entities offering certified health IT, health information exchanges, and health information networks. Section 3022(b)(2)(A) of the PHSA authorizes the imposition of civil money penalties (CMPs)³ not to exceed \$1 million per violation on those individuals and entities set forth in sections 3022(b)(1)(A) and (C) of the PHSA.

PHSA section 3022 also authorizes ONC, the HHS Office for Civil Rights (OCR), and OIG to consult, refer, and coordinate to resolve claims of information blocking. PHSA section 3022(b)(3)(A) authorizes OIG to refer claims of information blocking to OCR if OIG determines a consultation regarding the health privacy and security rules promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, Aug. 21, 1996) (42 U.S.C. 1320d–2 note) will resolve such claims. PHSA section 3022(d)(1) specifies that the National Coordinator may serve as a technical consultant to OIG and the Federal Trade Commission (FTC) for purposes of carrying out section 3022 and may share information related to claims or investigations of information blocking with the FTC for purposes of such investigations, in addition to requiring the National Coordinator to share information with OIG, as required by law.

PHSA section 3022(d)(4) requires the Secretary, in carrying out section 3022 and to the extent possible, to ensure that information blocking penalties do not duplicate penalty structures that would otherwise apply with respect to information blocking and the type of individual or entity involved as of the day before the date of enactment of the Cures Act. Section 3022(a)(7) of the PHSA states that, in carrying out section 3022, the Secretary shall ensure that health care providers are not penalized for the failure of developers of health information technology or other entities offering health information technology to such providers to ensure that such technology meets the requirements to be certified under Title XXX of the PHSA.

We address the statutory basis for each disincentive in greater detail in section III.C. of this final rule.

B. Regulatory History

1. ONC Cures Act Final Rule

On March 4, 2019, a proposed rule titled 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program (ONC Cures Act Proposed Rule) appeared in the **Federal Register** (84 FR 7424). The rule proposed to implement certain provisions of the Cures Act to advance interoperability and support the access, exchange, and use of electronic health information. The ONC Cures Act Proposed Rule included a request for information regarding potential disincentives for health care providers that have committed information blocking and asked whether modifying disincentives already available under existing Department programs and regulations would provide for more effective deterrence (84 FR 7553).

On May 1, 2020, a final rule titled 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program (ONC Cures Act Final Rule) appeared in the **Federal Register** (85 FR 25642). The final rule identified eight reasonable and necessary activities that do not constitute information blocking, consistent with the requirement in PHSA section 3022(a)(3). Such reasonable and necessary activities are often referred to as “exceptions” to the definition of information blocking, or “information blocking exceptions,” as specified in 45 CFR part 171.

The ONC Cures Act Final Rule finalized definitions that are necessary to implement the statutory information blocking provision in PHSA section 3022, including definitions related to the four classes of individuals and entities covered by the statutory information blocking provision: health care providers, health IT developers, health IT networks, and health IT exchanges.

As the term “health care provider” is not explicitly defined in section 3022 of the PHSA, as added by section 4004 of the Cures Act, the ONC Cures Act Final Rule adopted in 45 CFR 171.102 the definition of health care provider in section 3000(3) of the PHSA⁴ for

² As January 12, 2017, was the thirtieth day after December 13, 2016, conduct occurring on or after January 13, 2017, that otherwise meets the PHSA section 3022(a) definition of “information blocking,” would be included in that definition.

³ We use the term “civil money penalty” here, rather than “civil monetary penalty” as used in PHSA section 3022(b)(2)(A) for consistency with OIG’s usage in the OIG CMP Final Rule (88 FR 42820).

⁴ As defined in 42 U.S.C. 300–jj, the term “health care provider” includes a hospital, skilled nursing facility, nursing facility, home health entity or other long term care facility, health care clinic, community mental health center (as defined in section 300x–2(b)(1) of this title), renal dialysis facility, blood center, ambulatory surgical center described in section 1395l(i) of this title, emergency

purposes of the information blocking regulations in 45 CFR part 171. The definitions listed in section 3000 of the PHSA apply “[i]n this title,” which refers to Title XXX of the PHSA (85 FR 25795). Section 3022 of the PHSA is included in Title XXX.

The ONC Cures Act Final Rule also established in 45 CFR 171.102 regulatory definitions for “health information network or health information exchange” and “health IT developer of certified health IT,”⁵ among other terms.⁶ The preamble text of the ONC Cures Act Final Rule makes clear that an individual or entity could meet both the definition of a health care provider and the definition of a health IT developer of certified health IT (85 FR 25798 and 25799), or could meet both the definition of a health care provider and a health information exchange or network (85 FR 25801). We mention these potential scenarios so that health care providers are aware that they would not necessarily only be subject to the disincentives finalized in this rule, but depending on the specific facts and circumstances, they could meet the definition of a health

medical services provider, Federally qualified health center, group practice, a pharmacist, a pharmacy, a laboratory, a physician (as defined in section 1395x(r) of the title), a practitioner (as described in section 1395u(b)(18)(C) of the title), a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 *et seq.*]), tribal organization, or urban Indian organization (as defined in section 1603 of title 5), a rural health clinic, a covered entity under section 256b of this title, an ambulatory surgical center described in section 1395l(i) of this title, a therapist (as defined in section 1395w-4(k)(3)(B)(iii) of the title), and any other category of health care facility, entity, practitioner, or clinician determined appropriate by the Secretary. See also this guidance document: https://www.healthit.gov/sites/default/files/page2/2020-08/Health_Care_Provider_Definitions_v3.pdf.

⁵ In the ONC Cures Act Final Rule, ONC defined the term “health IT developer of certified health IT” in 45 CFR 171.102, instead of using the term that appears in PHSA 3022(a)(1): “health IT developer.” ONC explained that, because title XXX of the PHSA does not define “health information technology developer,” ONC interpreted section 3022(a)(1)(B) in light of the specific authority provided to ONC in section 3022(b)(1)(A) and (b)(2). ONC noted that section 3022(b)(2) discusses developers, networks, and exchanges by referencing any individual or entity described in section 3022(b)(1)(A) or (C). Section 3022(b)(1)(A) states, in relevant part, that ONC may investigate any claim that a *health information technology developer of certified health information technology* or other entity offering certified health information technology engaged in information blocking (85 FR 25795, emphasis added).

⁶ In January 2024, ONC finalized a definition of what it means to “offer health IT,” and finalized a corresponding update to the “health IT developer of certified health IT” definition. These policies are part of a final rule titled Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing (89 FR 1354 through 1358) (HTI-1 Final Rule).

information network, health information exchange, or health IT developer of certified health IT—and therefore be subject to civil money penalties, if found by OIG to have committed information blocking.

On November 4, 2020, an interim final rule with comment period titled Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID-19 Public Health Emergency (ONC Cures Act Interim Final Rule) appeared in the **Federal Register** (85 FR 70064). The ONC Cures Act Interim Final Rule extended certain compliance dates and timeframes adopted in the ONC Cures Act Final Rule to offer the healthcare system additional flexibilities in furnishing services to combat the COVID-19 pandemic, including extending the applicability date for the information blocking provisions to April 5, 2021 (85 FR 70068). The ONC Cures Act Interim Final Rule also extended from May 2, 2022, to October 6, 2022, the date on which electronic health information as defined in 45 CFR 171.102 for purposes of the information blocking definition in 45 CFR 171.103 would no longer be limited to the subset of EHI that is identified by data elements represented in the United States Core Data for Interoperability (USCDI) standard adopted in 45 CFR 170.213 (85 FR 70069).⁷ On and after October 6, 2022, practices likely to interfere with access, exchange, or use of any information falling within the definition of EHI in 45 CFR 171.102 may constitute information blocking as defined in 45 CFR 171.103.

2. Office of Inspector General (OIG) Civil Money Penalties (CMP) Final Rule

On April 24, 2020, a proposed rule titled Grants, Contracts, and Other Agreements: Fraud and Abuse; Information Blocking; Revisions to the Office of Inspector General’s Civil Money Penalty Rules (OIG CMP Proposed Rule) appeared in the **Federal Register** (85 FR 22979). The OIG CMP Proposed Rule set forth proposed regulations to incorporate new CMP authority for information blocking and related procedures in PHSA section 3022 (85 FR 22982). Specific to information blocking, OIG also provided information on—but did not propose regulations for—expected enforcement priorities, the investigation process, and OIG’s experience with investigating

conduct that includes an intent element (85 FR 22984).

A final rule titled Grants, Contracts, and Other Agreements: Fraud and Abuse; Information Blocking; Office of Inspector General’s Civil Money Penalty Rules appeared in the **Federal Register** on July 3, 2023 (OIG CMP Final Rule) (88 FR 42820). This rulemaking addressed imposition of CMPs for information blocking by health IT developers or other entities offering certified health IT, and health information exchanges and health information networks (HIEs/HINs). The OIG CMP Final Rule did not establish appropriate disincentives for health care providers that OIG has determined to have committed information blocking.

In the OIG CMP Final Rule, OIG stated that a health care provider that also meets the definition of a health IT developer of certified health IT, or HIE/HIN, or both, under 45 CFR 171.102, may be subject to information blocking CMPs (88 FR 42829). OIG further stated that as part of its assessment of whether a health care provider is a HIN/HIE that could be subject to CMPs for information blocking, OIG anticipates engaging with the health care provider to better understand its functions and to offer the health care provider an opportunity to explain why it is not a HIN/HIE (88 FR 42828).

3. Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking Proposed Rule

On November 1, 2023, a proposed rule titled 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking appeared in the **Federal Register** (88 FR 74947) (Disincentives Proposed Rule). The Disincentives Proposed Rule proposed to establish a set of appropriate disincentives for information blocking by health care providers using authorities under applicable Federal law, consistent with PHSA section 3022(b)(2)(B). The Disincentives Proposed Rule also proposed to define certain statutory terms and proposed to establish elements of a process for the imposition of appropriate disincentives by an appropriate agency. The Disincentives Proposed Rule further proposed to publicly post information on ONC’s website about health care providers that have been determined by OIG to have committed information blocking and subsequently referred by OIG to an appropriate agency to be subject to appropriate disincentives, as well about health IT developers of certified health

⁷ For more information about the USCDI, see: <https://www.healthit.gov/isa/united-states-core-data-interoperability-uscdi>.

IT and HIEs/HINs and that have been determined by OIG to have committed information blocking. Finally, the Disincentives Proposed Rule requested public comment on establishing disincentives for other health care providers included in the definition of health care provider in 45 CFR 171.102 that are subject to the information blocking regulations, but were not implicated by the disincentives proposed in the Disincentives Proposed Rule.

C. General Comments on the Disincentives Proposed Rule

We received a number of general comments on the Disincentives Proposed Rule. A discussion of those comments and responses can be found below.

Comments. Several commenters expressed general support for the proposed disincentives for health care providers who have been found to have committed information blocking. A few commenters stated that the disincentives will lead to better patient outcomes, improved information sharing, increased transparency, a reduction in systemic inefficiency and waste, and improved accountability and compliance. A few commenters expressed general support for the establishment of the disincentives proposed because the disincentives are necessary and appropriate and would discourage information blocking by health care providers. Commenters also asserted that the proposed disincentives would encourage data exchange and enhance interoperability.

Response. We thank the commenters for their support.

Comments. Many commenters recommended that HHS delay implementation or enforcement of information blocking disincentives against health care providers. Commenters recommended this delay in order for HHS to provide education regarding issues such as: what constitutes information blocking; the investigation process; the application of disincentives; and information about exceptions. Commenters stated that a delay was warranted because the information blocking regulations, including the disincentives discussed in this final rule, are new and complicated, requirements change frequently, and health care providers need time to implement information sharing processes and identify best practices. Commenter recommendations for how long to delay enforcement following the publication of the final rule ranged from 1 to 2 years.

Response. We disagree with commenters that further delay in establishing disincentives for health care providers that commit information blocking is necessary. We note that the information blocking regulations in the ONC Cures Act Final Rule went into effect April 5, 2021 (85 FR 70068), and several years will have already passed between the date when these regulations went into effect for health care providers and the effective date of this final rule. In addition, the disincentives CMS has finalized in this final rule are established under authorities for existing programs with which health care providers are already familiar. Thus, we do not believe it is necessary to further delay establishment of disincentives. We refer readers to section III.C. of this final rule, in which CMS describes how each of the disincentives it has finalized will be effective upon the effective date of this final rule.

We also note that section III.B.1. of this final rule states that OIG will not begin investigating possible information blocking committed by health care providers until after the effective date of this rule, and that OIG will exercise its enforcement discretion not to make any determinations regarding conduct occurring prior to the effective date of this rule for information blocking disincentives. As OIG will not make a determination on conduct occurring prior to the effective date, OIG will not refer any health care providers based on a determination of conduct occurring prior to the effective date of this rule for information blocking disincentives. This means that no disincentives finalized in this final rule will be applied to conduct occurring before the effective date of this final rule.

We appreciate the recommendations regarding offering educational opportunities that would be helpful to health care providers and will consider these recommendations.

Comments. A few commenters requested that HHS set a maximum period from the date the alleged information blocking complaint was referred, after which HHS would not impose any disincentives, such as a 6-year period to align with the time period for imposing CMPs for other actors. Some commenters expressed concern that the proposed process for investigating claims of information blocking and referring findings to appropriate agencies for disincentives could cause a long delay between the information blocking complaint being filed and the application of a disincentive.

Response. For the disincentives finalized in section III.C. of this final rule, CMS did not propose and has not finalized a maximum period from the date the alleged information blocking complaint was referred, after which CMS would not impose the disincentives it has finalized. Because the authorities used to establish disincentives may include requirements related to timing around the imposition of disincentives, we believe it is more appropriate to allow appropriate agencies to establish any such limits instead of setting a uniform limit for any disincentive established to deter information blocking by health care providers. We note that for the disincentive policy finalized under the Shared Savings Program in section III.C.4., CMS will consider relevant facts and circumstances before imposing a disincentive under the Shared Savings Program, and CMS has stated that one of the relevant factors CMS will consider is the time elapsed since a referral of information blocking has taken place. For the disincentives finalized for the Medicare Promoting Interoperability Program and the MIPS Promoting Interoperability performance category in sections III.C.2. and III.C.3., respectively, CMS has stated that it will impose the applicable disincentive in the EHR reporting period or performance period of the calendar year that a referral of a determination of information blocking is received from OIG. We further recognize that there may be a delay between the initial submission of an information blocking claim and the eventual application of a disincentive if OIG determines that the practices identified in the claim were information blocking and refers the determination to an appropriate agency. However, we are unable to estimate the time necessary to complete investigations of these practices.

As commenters mentioned, section 3022(b)(2)(C) of the PHSA, which applies to actors subject to the information blocking regulations that are not health care providers (health IT developers or other entities offering certified health IT, and HINs/HIEs), requires the imposition of CMPs to follow the procedures set forth in section 1128A of the Social Security Act (SSA). Section 1128A(c)(1) requires that an action for CMPs must be initiated within 6 years from the date of the occurrence. In the OIG CMP Final Rule, OIG stated that this would be 6 years from the date of the violation (88 FR 42826).

Comments. A few commenters recommended the creation of a centralized HHS coordinating entity to

implement and oversee information blocking disincentives, provide a main point of contact for health care providers to learn about the process and resolve discrepancies, ensure coordination among agencies, and minimize confusion and potential errors that could cause burden for providers. One commenter stated that supplemental rulemaking would be needed to create this centralized HHS coordinating entity and that HHS should engage in this supplemental rulemaking before finalizing the Disincentives Proposed Rule. A few commenters specifically suggested the creation of a clearinghouse process to ensure disincentives applied are not duplicative, arbitrary, and unduly punitive.

Response. We appreciate this recommendation. While we did not propose to create an entity as recommended by the commenters, we may consider this recommendation in future rulemaking. However, we do not believe that establishing such an entity is necessary to finalize the policies in this final rule, as many of these issues are addressed through existing policies. For instance, regarding coordination between agencies, we refer readers to the discussion in section III.B.1.b. of this final rule where we discuss the ways ONC, OCR, and OIG will consult, refer, and coordinate on information blocking claims as permitted by the Cures Act (see also, 88 FR 42823 and 42824). We also refer readers to the information provided about OIG's investigation process in section III.B.1. of this final rule, which includes a discussion of how OIG may engage with health care providers as part of its investigation, as necessary, to understand specific facts and circumstances related to an information blocking claim. The commenters did not provide further information about how such an entity would address issues related to ensuring disincentives are not duplicative, arbitrary, and unduly punitive.

Comments. A few commenters recommended that ONC allow for 'complaint clearinghouses,' where health care providers or payers can send their complaints alleging information blocking violations to an independent, private sector third party who would aggregate those complaints over time and submit them as a group to HHS to ensure complaints are unattributed to specific complainants. Commenters suggested this approach could mitigate concerns over retaliation, retribution, or harm to business relationships associated with alleging information blocking violations. A few commenters

also recommended ONC, OIG, and CMS be more transparent in providing specifics to the public on how complaints will be handled to ensure interested parties have transparency in knowing the status of their complaints, and when a final decision can be expected.

Response. We thank commenters for their suggestions. As authorized under PHSA section 3022(d)(3)(A), ONC has already established a "a standardized process for the public to submit reports on claims" related to information blocking. We refer readers to the discussion of the complaint process in the ONC Cures Act Final Rule (85 FR 25899 and 25900), as well as the Information Blocking Portal on ONC's website for more information.⁸ Regarding commenters' concerns around harm resulting from attribution of complaints to specific organizations, we note that PHSA section 3022(d)(2) prohibits the National Coordinator from disclosing "[a]ny information that is received by the National Coordinator in connection with a claim or suggestion of possible information blocking and that could reasonably be expected to facilitate identification of the source of the information" except as may be necessary to carry out the purpose of PHSA section 3022 (PHSA section 3022(d)(2)(A)). As stated in the ONC Cures Act Final Rule, we believe the publishing of complaints could lead to the identification of the source of the information or reasonably facilitate identification of the source; therefore, we do not intend to make complaints publicly available (85 FR 25900). While the complaint process is not required by statute to be established through rulemaking, we will take commenters' input into consideration as we continue to receive complaints related to information blocking.

Comments. Commenters stated that health care providers are still unclear about what practices are prohibited under the information blocking regulations. Commenters also recommended that supplemental rulemaking or sub-regulatory guidance be provided on certain topics prior to implementation or enforcement of health care provider information blocking disincentives, including: further describing investigative processes and the application of disincentives; the establishment of an appeals process; and describing how the disincentives implemented under this final rule interact with existing quality reporting program rules.

⁸ For more information, see: <https://inquiry.healthit.gov/support/plugins/servlet/desk/portal/6>.

Response. We appreciate commenters' concerns and recognize that many health care providers are still gaining awareness and understanding of the information blocking regulations. We encourage health care providers to review the resources available on ONC's website to learn more about practices that may be information blocking.⁹

We appreciate commenters' recommendations for topics HHS should consider addressing through notice and comment rulemaking. However, we note this final rule addresses many of these issues, including: the OIG investigative process (section III.B.1.), application of disincentives (section III.B.2.), and appeals processes (section III.B.2.). The discussion of the disincentives finalized in sections III.C.2. through III.C.4. does not identify any interactions with quality reporting program rules. Quality reporting programs are entirely separate authorities from those under which we proposed appropriate disincentives (which we have finalized in section III.C. of this rule); therefore, we are unclear what commenters' concerns are with respect to information blocking disincentives and quality reporting programs.

The discussion of these issues provides additional information regarding the policies we have finalized in this rule and further notice and comment rulemaking on these topics is not necessary before finalizing these policies, due to the completeness of the policies described in this final rule.

Comments. A few commenters recommended that before implementing health care provider information blocking disincentives the agencies should work to advance EHR adoption and interoperability. Commenters recommended that HHS further define and clarify interoperability standards, and recognize that not all health care providers utilize EHRs.

Response. We do not agree that the need for further advances with respect to EHR adoption and interoperability should delay establishing the disincentives for health care providers that have been found to commit information blocking that we finalize in this rule. While we recognize that additional progress can be made to improve interoperability and advance adoption of EHRs, many health care providers are using electronic health information today and could engage in practices that are considered information blocking under PHSA section 3022. Therefore, it is important

⁹ For more information, see: <https://www.healthit.gov/faqs>.

that appropriate disincentives exist to deter information blocking by those health care providers that are currently using electronic health information. We note that HHS has pursued activities to advance interoperability in EHRs and other health IT systems through a variety of initiatives, including the ONC Health IT Certification Program. For more information about initiatives to advance interoperability, we refer readers to resources on ONC's website.¹⁰

Comments. Several commenters provided recommendations about specific scenarios that should not be considered information blocking, including: a delay in the release of sensitive and distressing health information and test results, such as for severe or complex diagnoses, to allow for provider review; a delay in the release of information in the interest of patient safety; a delay in the release of information if a patient states that they will harm themselves if they receive a diagnosis from their provider; or instances where a provider attempts in good faith to comply with an exception or not engage in information blocking.

Response. We thank commenters for their recommendations regarding information blocking exceptions, however, we did not propose any exceptions to information blocking in the Disincentives Proposed Rule and these issues are out of scope for this final rule. In the ONC Cures Act Final Rule (85 FR 25820), ONC established exceptions to information blocking consistent with PHSa section 3022(a)(3), and subsequently made revisions to these exceptions in the HTI-1 Final Rule (89 FR 1373). We invite readers to review the information blocking exceptions to better understand how various scenarios may be addressed by these exceptions.¹¹ We may also consider this input for future rulemaking related to exceptions to information blocking.

Comments. A few commenters recommended delaying the implementation or enforcement of provider information blocking disincentives until issues related to reproductive health data and privacy are resolved. A few commenters expressed concern that the proposals described in section III.C. of the Disincentives Proposed Rule could negatively impact patient-provider relationships, risk patient and provider criminalization,

and lead to patients delaying seeking healthcare due to reproductive health data and privacy issues. A few commenters recommended considering the context of the healthcare landscape following the overturning of the Federal constitutional right to an abortion and subsequent legislation in certain states to criminalize people who seek reproductive health care before finalizing the proposals in section III.C. of the Disincentives Proposed Rule. Commenters expressed concern that because of the financial impact the proposed appropriate disincentives may carry, health care providers may disclose sensitive health information, including reproductive health information, to the detriment of people seeking reproductive care. Commenters similarly expressed concern that the Disincentives Proposed Rule could result in the disclosure of other forms of sensitive health information, including information related to contraceptive access, in vitro fertilization (IVF), gender-affirming healthcare, sexually transmitted infections (STIs), intimate partner violence, and sexual assault. A few commenters recommended providers be exempt from information blocking requirements if they do not disclose patient information to protect patient privacy related to sexual and reproductive health and to protect the patient or themselves from criminalization or harassment. The commenter also recommended that a new "good faith" exception to information blocking should be established under which providers acting in "good faith" to withhold sensitive health information are presumed to be acting reasonably and in the best interest of their patients. One commenter recommended that implementation of disincentives should not occur until EHRs can ensure sensitive health data can be protected, clear concise exceptions are created, and consent management software is widely available. Commenters stated that EHR vendors cannot currently meet data segmentation standards for sensitive health information, such as reproductive healthcare data. One commenter recommended delaying implementation for 2 years to allow providers to comply with the anticipated "HIPAA Privacy Rule to Support Reproductive Health Care Privacy" final rule¹² and ONC's "Health Data, Technology, and Interoperability: Certification Program Updates,

Algorithm Transparency, and Information Sharing" proposed rule (88 FR 23746).¹³

Response. We acknowledge the concerns commenters may have regarding the sensitivity of health data relating to reproductive health care and will take these comments under consideration. We further acknowledge commenters' concerns that disincentives could lead to health care providers disclosing sensitive health information, including reproductive health information, and welcome commenters' recommendations regarding an exception to information blocking when a health care provider withholds sensitive information to protect the patient or themselves from criminalization or harassment. However, we did not propose exceptions to information blocking in the Disincentives Proposed Rule and believe that such policies are out of scope for this final rule. Instead, we will take these comments under consideration for other rulemaking activities in which we focus on revising and expanding the exceptions to information blocking.

Section 4004 of the Cures Act, which added section 3022 to the PHSa, does not amend existing laws governing the confidentiality, privacy, and security of health information, such as HIPAA, its implementing regulations at 45 CFR parts 160, and 164, or other applicable Federal or state laws or regulations. Health care providers are responsible for ensuring their compliance with applicable laws and regulations governing confidentiality, privacy, and security of their patients' health information.

Regarding commenters' statement that implementation of disincentives should not occur until improvements to technical approaches to data segmentation are achieved, we agree that this is an important area for advancement. However, we believe that this work can continue in parallel with the finalization of this rule and establishment of information blocking disincentives for health care providers.

Finally, we acknowledge that health care providers are also focused on meeting other regulatory provisions. However, we reiterate that the information blocking regulations in 45 CFR part 171 have been effective since April 5, 2021, and that this final rule is focused on establishing disincentives for practices that are inconsistent with

¹⁰ For more information, see: <https://www.healthit.gov/topic/interoperability>.

¹¹ For more information on exceptions to information blocking, see ONC's website: <https://www.healthit.gov/topic/information-blocking>.

¹² Subsequent to receiving this comment, the HIPAA Privacy Rule To Support Reproductive Health Care Privacy final rule (89 FR 32976) appeared in the **Federal Register** on April 26, 2024.

¹³ The Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing final rule (89 FR 1192) appeared in the **Federal Register** on January 9, 2024.

the existing regulations defining information blocking. It does not create new affirmative obligations for health care providers.

Comments. One commenter expressed concerns that the changes to the information blocking regulations have occurred too frequently, thereby creating burden and confusion for health care providers. One commenter expressed concern about the impact this new proposed disincentive structure will have on health care providers, given that they are also navigating other requirements related to EHI, such as surprise billing, electronic prescription, and electronic clinical quality measures. The commenter recommended that CMS remain cognizant of the many regulations that govern the flow of EHI and the differences in health IT use between provider types and sites of service.

Response. We appreciate commenters' concerns. We understand that health care providers are continuing to gain experience and understanding of the information blocking regulations, and that health care providers have numerous compliance obligations with respect to Federal laws and regulations. We will continue to collaborate closely within the Department to consider other requirements that impact health care providers and seek to reduce burden.

Comments. One commenter requested we provide lessons learned from cases of information blocking on the website to help educate actors on what does and does not qualify as information blocking. One commenter recommended a nation-wide marketing campaign to educate patients about information blocking practices and promote awareness of the information blocking website.

Response. We appreciate the commenters' recommendations and will take them into consideration as we develop educational materials in the future. We note that there are resources available on ONC's website¹⁴ about information blocking, which can help health care providers learn about what practices constitute information blocking and how health care providers can avoid these practices.

III. Provisions of the Regulation and Anticipated Approach to Investigations and Referrals

A. Relevant Statutory Terms and Provisions

In this section, we discuss certain statutory terms and provisions in PHS sections 3022(a) and (b) related to the

establishment of appropriate disincentives for health care providers as defined in 45 CFR 171.102. For brevity, we refer to PHS section 3022(b)(2)(B), which states that health care providers that OIG has determined to have committed information blocking "shall be referred to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking," as the "disincentives provision" throughout this section.

1. Appropriate Agency

The disincentives provision states that an individual or entity that is a health care provider determined by OIG to have committed information blocking shall be referred to the "appropriate agency" to be subject to appropriate disincentives. In the Disincentives Proposed Rule, we proposed to define "appropriate agency" in 45 CFR 171.102 to mean a government agency that has established disincentives for health care providers that OIG determines have committed information blocking (88 FR 74951). An "agency" may be any component of HHS that has established a disincentive or disincentives on behalf of the Secretary of HHS, including any of the Staff or Operating Divisions of HHS. For example, the disincentives finalized in section III.C. of this final rule are established using authorities held by CMS, which is an Operating Division of HHS. Under the disincentives finalized in this final rule, CMS is the "appropriate agency" to which OIG will refer a health care provider to be subject to disincentives.

We invited public comments on our proposed definition of "appropriate agency." The following is a summary of the comments we received and our responses.

Comments. One commenter agreed that CMS would be the appropriate agency for OIG referrals for enforcement because of the large percentage of health care providers participating in the programs discussed in section III.C. of the Disincentives Proposed Rule and the fact that CMS administers those programs.

Response. We thank the commenter for their support. We wish to clarify that an appropriate agency could include any of the Staff or Operating Divisions of HHS. However, all of the disincentives finalized in this rule were established using authorities for programs administered by CMS.

Comments. One commenter contended that the proposed definition of "appropriate agency" is very broad and requested that the specific agencies

that may receive a referral and assess provider disincentives be clarified and listed in the rule.

Response. We appreciate the comment but decline to change the definition of "appropriate agency" to list all of the specific agencies that may receive a referral and impose disincentives. We note that, as of the effective date of this final rule, the only agency that has established disincentives for health care providers is CMS. While other disincentives could be established under other agencies through future notice and comment rulemaking, we cannot preemptively identify the agencies that may establish disincentives at this time. Therefore, we believe maintaining the broad definition of appropriate agency is appropriate as it allows for the potential addition of disincentives established under other agencies in the future.

After consideration of the public comments, we have finalized our definition of "appropriate agency" in 45 CFR 171.102 as proposed to mean a government agency that has established disincentives for health care providers that OIG determines have committed information blocking.

2. Authorities Under Applicable Federal Law

In the Disincentives Proposed Rule we proposed to interpret the phrase "authorities under applicable Federal law" in the disincentives provision to mean that an appropriate agency may only subject a health care provider to a disincentive established using authorities that could apply to information blocking by a health care provider subject to the authority, such as health care providers participating in a program supported by the authority (88 FR 74951). In section III.C. of this final rule, CMS identifies the authority under which each disincentive has been finalized.

The following is a summary of the comments we received and our responses.

Comments. One commenter expressed concern that the proposed interpretation of "authorities under applicable Federal law" limits the agency's ability to put in place an effective and fair enforcement structure for information blocking by limiting the applicable authority only to those with already existing penalty structures that exist to serve other policy goals. The commenter recommended that HHS revisit its interpretation of "authorities under applicable Federal law" to allow appropriate agencies to promulgate specific disincentives for information blocking conduct that: permit

¹⁴ For more information, see: <https://www.healthit.gov/topic/information-blocking>.

consideration of mitigation and aggravating factors; allow for a broader range of disincentives (including technical assistance and corrective action plans); and preserve a health care provider's due process rights.

Response. We appreciate the commenter's recommendations. However, we note that PHSA section 3022(b)(2)(B) specifies that disincentives must be established "using authorities under applicable Federal law." As a result, disincentives established by an appropriate agency must be consistent with the authority under which the appropriate agency establishes the disincentive through notice and comment rulemaking. Furthermore, under the definition of "disincentive" that we have finalized in 45 CFR 171.102, a disincentive is imposed for the purposes of deterring information blocking. By finalizing this definition, we intend to limit disincentives to only include the conditions established by an appropriate agency that are intended to have a deterrent effect on information blocking practices. The disincentives provision in PHSA section 3022(b)(2)(B) and the definition of disincentive that we have finalized in 45 CFR 171.102 do not limit an appropriate agency from proposing, via notice and comment rulemaking, to establish other programmatic elements mentioned by the commenters, if such elements are within the scope of the appropriate agency's authority.

Comments. One commenter stated that the interpretation of "authorities under applicable Federal law" described in the Disincentives Proposed Rule limits HHS to promulgating disincentives that are duplicative of existing penalty structures that might otherwise apply to information blocking conduct committed by certain health care providers. The commenter stated that this may conflict with the statutory requirement in PHSA section 3022(d)(4). The commenter stated that Congress' intent with the provision in PHSA section 3022(d)(4) was that HHS, in establishing disincentives, should take all measures possible to not use existing authorities that could apply to information blocking by a health care provider. The commenter further stated that existing authorities under which we proposed to establish disincentives in the Disincentives Proposed Rule, such as the Medicare Promoting Interoperability Program as well as the Medicare Shared Savings Program, exist to serve other policy goals and regulatory requirements, and disincentives established under these authorities should not qualify as an

appropriate enforcement structure to target information blocking specifically.

Response. We disagree that the disincentives CMS has finalized in this final rule conflict with the statutory provision in PHSA section 3022(d)(4). Section 3022(d)(4) of the PHSA requires the Secretary, in carrying out section 3022 and to the extent possible, to ensure that information blocking penalties do not duplicate penalty structures that would otherwise apply with respect to information blocking and the type of individual or entity involved as of the day before the date of enactment of the Cures Act. However, the disincentives that CMS has finalized in section III.C. of this final rule create new policies to deter information blocking that are based on a referral of a determination by OIG that a health care provider has committed information blocking as defined in PHSA section 3022(a).

After consideration of the public comments, we continue to view the disincentives provision in PHSA section 3022(b)(2)(B) to require that an appropriate agency may only subject a health care provider to a disincentive established using authorities that could apply to information blocking by a health care provider subject to the authority, such as health care providers participating in a program supported by the authority.

3. Appropriate Disincentives

We stated in the Disincentives Proposed Rule that the Cures Act does not specify or provide illustrations for the types of disincentives that should be established (88 FR 74951). As such, we proposed to define the term "disincentive" in 45 CFR 171.102 to mean a condition specified in 45 CFR 171.1001(a) that may be imposed by an appropriate agency on a health care provider that OIG determines has committed information blocking for the purpose of deterring information blocking practices. In section III.B.2. of the Disincentives Proposed Rule, we proposed to identify in 45 CFR 171.1001(a) those disincentives that have been established pursuant to the statute for the express purpose of deterring information blocking practices (88 FR 74952 and 74953).

We also noted that the term "appropriate" for disincentives is likewise not defined in PHSA section 3022, nor are illustrations provided. In the Disincentives Proposed Rule, we stated that a disincentive for a health care provider that OIG has determined to have committed information blocking may be any condition, established through notice and comment

rulemaking, that would, in our estimation, deter information blocking practices among health care providers subject to the information blocking regulations (88 FR 74951). In section III.C. of the Disincentives Proposed Rule, CMS described the potential impact that each proposed disincentive would have on a health care provider (88 FR 74954 through 74966).

Finally, in the Disincentives Proposed Rule we noted that the disincentives provision does not limit the number of disincentives that an appropriate agency can impose on a health care provider (88 FR 74951). Accordingly, we proposed that a health care provider would be subject to each appropriate disincentive that an agency has established through notice and comment rulemaking and is applicable to the health care provider. We stated that imposing cumulative disincentives, where applicable, would further deter health care providers from engaging in information blocking.

We invited public comments on our proposals to establish disincentives in section III.C. of the Disincentives Proposed Rule (88 FR 74954 through 74966). The following is a summary of the comments we received and our responses on the definition of the term "disincentive" and related proposals.

Comments. One commenter agreed that a health care provider should be subject to appropriate and applicable disincentives established through notice and comment rulemaking. Some commenters agreed that subjecting health care providers to cumulative disincentives, where applicable, may deter providers from engaging in information blocking.

Response. We thank the commenters for their support.

Comments. A few commenters expressed concern that the proposed definition of "appropriate disincentives" is too broad and unclear. The commenters requested that ONC narrow its definition of "appropriate disincentives" so that it is reflective of the underlying statute's requirement that disincentives be appropriate. Another commenter expressed concern that the definition does not impose limits on what may be deemed "appropriate," therefore any disincentive proposed by an appropriate agency could theoretically meet this broad standard. Commenters expressed that a disincentive structure that does not consider the severity of the underlying misconduct cannot be considered "appropriate."

Response. We thank the commenters for their input. We note that we did not propose to define the term "appropriate

disincentives.” Instead, we proposed to define the term “disincentive,” to mean a condition specified in § 171.1001(a) that may be imposed by an appropriate agency on a health care provider that OIG determines has committed information blocking for the purpose of deterring information blocking practices (88 FR 74951). We have finalized this proposed definition at 45 CFR 171.102 with a modification to replace the phrase “may be imposed” with “is imposed” to clarify that a disincentive is the completed action by an appropriate agency to impose a condition on a health care provider that OIG determines has committed information blocking.

Regarding commenter concerns that we did not propose to impose limits on what may be deemed “appropriate,” and that a disincentive which does not consider the severity of the underlying misconduct should not be deemed “appropriate,” we reiterate that the term “appropriate” is not defined in PHSA section 3022, nor are illustrations provided. We believe that term “appropriate” is capacious and is best read to give the Secretary significant discretion to craft disincentives using existing authorities. As we noted in the Disincentives Proposed Rule, the key feature of appropriate disincentives is that the agency believes that they will deter information blocking (88 FR 74951). We have carefully considered each disincentive we have finalized for appropriateness, as it relates to deterring information blocking; in section III.C.2.–III.C.4., CMS describes the potential impact of each proposed disincentive on a health care provider which would result in deterring information blocking practices.

However, we believe the disincentives finalized in section III.C. also align with the use of the term “appropriate” in PHSA section 3022 by including certain limits on the impact of each disincentive. For instance, under the Medicare Promoting Interoperability Program and the MIPS Promoting Interoperability performance category, CMS has finalized disincentives that affect otherwise applicable payment adjustments based on a health care provider failing to meet the requirements of each program by committing information blocking. In sections III.C.2.c. and III.C.3.c., CMS has finalized that the disincentive under each program would only be applied for the EHR reporting period or performance period of the calendar year in which OIG refers a determination of information blocking to CMS. Barring a subsequent referral of a determination of information blocking, the health care

provider would be eligible to successfully meet the program’s requirements in the following calendar year’s EHR reporting period or performance period. As discussed in section III.C.4., the disincentive finalized under the Medicare Shared Savings Program to deter information blocking through potential denial of approval to participate in or removal from the Shared Savings Program, limits the duration of the disincentive to a year to ensure that health care providers who have committed information blocking and corrected their actions are not permanently barred from participating in the Shared Savings Program. By balancing deterrent impact with these limits, CMS has finalized disincentives consistent with the general direction in PHSA section 3022 to establish disincentives that are “appropriate.”

We disagree with the commenter that a disincentive that cannot be adjusted to reflect the severity of the underlying misconduct cannot be considered “appropriate.” To be sure, the agency imposing an appropriate disincentive on a health care provider may not have the flexibility to determine the value of the disincentive for each individual or entity based on their conduct, as authorized for developers, networks, and exchanges that engage in information blocking under PHSA section 3022(b)(2)(A) (through CMPs). But lingering inflexibility is a function of the statute’s authorization only to use “existing authorities” to subject health care providers to disincentives rather than CMPs.

Finally, we did not propose to define disincentive in the manner commenters have suggested in order to preserve flexibility for agencies to establish disincentives for information blocking. Since disincentives must be established using authorities under applicable Federal law (in accordance with PHSA section 3022(b)(2)(B)), there may be a limited set of statutory provisions that could be used to establish disincentives. Thus, we proposed and have finalized a definition of disincentive that would not unduly limit our ability to use available authorities to establish disincentives and have not proposed to further limit disincentives through proposing a definition for the term “appropriate.”

Comments. One commenter recommended that ONC revise its proposed definition of “appropriate disincentives” to explicitly incorporate technical assistance or a corrective action plan. The commenter further contended that this adjustment would be more consistent with HHS’ enforcement of other regulations, such

as the HIPAA Privacy and Security Rules.

Response. We appreciate the commenter’s recommendation. We note that we did not propose to define the term “appropriate disincentives.” Instead, we proposed to define the term “disincentive” to mean a condition specified in § 171.1001(a) that may be imposed by an appropriate agency on a health care provider that OIG determines has committed information blocking, for the purpose of deterring information blocking practices. Activities such as the provision of technical assistance or the provision of a corrective action plan may not adequately deter information blocking practices, and we decline to include such activities in the definition of a disincentive at this time. We further refer readers to resources on ONC’s website¹⁵ about information blocking, which can help health care providers learn about what practices constitute information blocking and how health care providers can avoid these practices.

Comments. Many commenters did not support our proposal for a health care provider to be subject to each appropriate disincentive established by an appropriate agency applicable to such health care provider, without limit to the number of disincentives, and disagreed that this policy would deter providers from engaging in information blocking. One commenter contended that unlimited cumulative disincentives should not be considered appropriate.

Several commenters expressed that subjecting health care providers to multiple disincentives for the same misconduct, simply based on their participation in multiple programs rather than the severity of the conduct, is duplicative, overly punitive, and heightens the risk for providers who participate in multiple CMS programs. A few commenters recommended that HHS establish a clear process to reconcile multiple disincentives and ensure fair and non-duplicative or punitive enforcement for providers participating in multiple programs. A few commenters suggested limiting the number of disincentives that could be applied or clarifying under which program the disincentive would be applied. A few commenters expressed concern that the allowance of cumulative disincentives will create confusion and complexity.

Response. We thank commenters for their input. We disagree with commenters that multiple disincentives will not deter information blocking, as

¹⁵ For more information, see: <https://www.healthit.gov/topic/information-blocking>.

the increased impact on a health care provider of receiving cumulative disincentives is likely to be a stronger deterrent due to potentially imposing greater adverse consequences on the health care provider that commits information blocking. Moreover, health care providers who participate in multiple programs may be larger than health care providers who do not participate in multiple programs, or may have a greater ability to influence health information exchange than other health care providers, and so may need greater disincentive exposure to deter information blocking practices.

Finally, we believe that the possibility of receiving cumulative disincentives will have a greater deterrent effect on health care providers that are determined to have committed information blocking, since individual disincentives are likely to have variable impacts depending on the circumstances of a given health care provider, as further discussed in section III.C.1. of this final rule. If a health care provider expects to only be subject to one disincentive, and the health care provider expects the disincentive to have a small impact, for instance, through minimal exposure under a certain program, the value of that disincentive to deter information blocking practices for that health care provider will be minimized. The availability of disincentives under more than one authority can mitigate this issue, as under our policy a health care provider may expect that they could be subject to cumulative disincentives established under different authorities, increasing the likelihood that there is an available disincentive that will have a meaningful deterrent effect for that specific health care provider.

We also disagree with the commenter that the term “appropriate” should be interpreted to prohibit applying multiple disincentives on a health care provider that has committed information blocking. PHSA section 3022(b)(2)(B) specifically contemplates that a health care provider may be subject to “appropriate disincentives”—plural. The plain language of the statute therefore suggests that multiple “disincentives” would be “appropriate.”

We further disagree that subjecting a health care provider to multiple disincentives is unfair and overly punitive. The disincentives that CMS has finalized in this final rule are established under authorities which provide for specific requirements for programs authorized under those authorities. CMS describes in section III.C. how information blocking

committed by a health care provider would conflict with the requirements under each of the programs through which a disincentive has been established. Accordingly, we believe it is reasonable that a health care provider that has acted in a manner inconsistent with these programs by committing information blocking could be subject to a disincentive under that authority, regardless of whether the health care provider has also been subject to a disincentive established under another authority.

However, we believe it is necessary to provide further clarification around our proposed policy with respect to cumulative disincentives. Specifically, we believe that our proposed policy may not have accounted for scenarios under which an appropriate agency may choose to exercise discretion when imposing a disincentive. For example, in section III.C.4. of this final rule, CMS has finalized a policy under the authority for the Shared Savings Program, which CMS originally discussed as an alternative policy in the Disincentives Proposed Rule (88 FR 74966). This finalized policy will permit CMS, as the appropriate agency, to consider relevant facts and circumstances when deciding whether to apply a disincentive to an ACO, ACO participant, or ACO provider/supplier in the Shared Savings Program.

We note that CMS has finalized this alternative policy for the Medicare Shared Savings Program only, as this policy is consistent with existing practices under the Shared Savings Program for addressing program integrity issues among ACOs, ACO participants, or ACO providers/suppliers. In addition, this policy addresses scenarios specific to imposing a disincentive under the Shared Savings Program, for instance, where removal of one entity from participation in an ACO could result in the ACO not meeting program requirements such as falling below the 5,000 assigned beneficiary threshold required by 42 CFR 425.110(a)(1), thereby interrupting care coordination benefits of beneficiaries receiving care from ACO participants and ACO providers/suppliers that did not commit information blocking. Under the finalized alternative policy, CMS will consider relevant facts and circumstances before imposing a disincentive under the Shared Savings Program. The relevant facts and circumstances include the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, whether

the provider was previously subject to a disincentive in another program, and other factors. We refer readers to section III.C.4. for a complete discussion of the alternative policy finalized under the Shared Savings Program. As discussed in sections III.C.2. and III.C.3. of this final rule, the Medicare Promoting Interoperability Program and the MIPS Promoting Interoperability performance category will impose a disincentive on an applicable health care provider following a referral of an information blocking determination by OIG.

Thus, we are revising our proposed policy for consistency with the policies finalized in this rule. Where we stated in the proposed rule (88 FR 74951) that a health care provider “would” be subject to each appropriate disincentive that an agency has established through notice and comment rulemaking and is applicable to the health care provider, in this final rule we clarify that, under the disincentives provision, a health care provider “may” be subject to each appropriate disincentive that an agency has established through notice and comment rulemaking and is applicable to the health care provider. Under this revised policy, we acknowledge that an appropriate agency could establish a policy that allows for discretion in imposing a disincentive, consistent with the agency's authority and implementing regulations.

Finally, we disagree with the commenters that a cumulative disincentives approach will introduce more confusion and complexity. We believe this final rule provides clarity about the disincentives established under each of the relevant programs to ensure health care providers understand the consequences they may face for committing information blocking with respect to the requirements of each program.

Comments. A few commenters expressed concern about the negative and disproportionate impact of potentially imposing cumulative disincentives on small and less resourced practices. One commenter recommended considering the relative impact of cumulative disincentives on the health care provider, such as the size and resources of the provider.

Response. We appreciate the commenters' concerns about the impact of cumulative disincentives on small and less resourced practices. However, we disagree with commenters that we should revise our policy with respect to cumulative disincentives to be based on the size and resources of the health care provider subject to the disincentive, as we believe this policy should be consistent across health care providers,

regardless of their size, and that any considerations with respect to how an appropriate disincentive should impact health care providers should be addressed by the appropriate agency establishing the disincentive.

An appropriate agency, in establishing a disincentive and related policies, could retain or implement policies based on the type of health care provider subject to the disincentive, including small practices, consistent with the agency's authority. For instance, CMS automatically reweights the MIPS Promoting Interoperability performance category to zero percent of a MIPS eligible clinician's final score if the MIPS eligible clinician is in a small practice as defined in 42 CFR 414.1305 and does not submit data for the MIPS Promoting Interoperability performance category for the applicable performance period (42 CFR 414.1380(c)(2)(i)(C)(9)). In other words, if the MIPS eligible clinician meets this criterion for automatic reweighting at 42 CFR 414.1380(c)(2)(i)(C)(9), the MIPS eligible clinician is not required to complete the requirements for earning a score for the Promoting Interoperability performance category as set forth in 42 CFR 414.1375. In such event, CMS does not assign a score for the MIPS eligible clinician for the Promoting Interoperability performance category and redistributes the weight of the performance category (typically 25 percent of the final score) to the remaining performance categories on which the MIPS eligible clinician is scored in accordance with 42 CFR 414.1380(c)(2)(ii). In section III.C. of the proposed rule and section III.C. of this final rule, CMS has neither proposed nor finalized any policy that would amend this automatic reweighting policy at 42 CFR 414.1380(c)(2)(i)(C)(9) for MIPS eligible clinicians in a small practice if such practice were subject to the disincentive being finalized as discussed section III.C.3. of this final rule.

After consideration of the public comments, we have finalized our definition of the term "disincentive" in 45 CFR 171.102 as proposed to mean a condition specified in 45 CFR 171.1001(a) that is imposed by an appropriate agency on a health care provider that OIG determines has committed information blocking for the purpose of deterring information blocking practices. We have also finalized our policy, with modification, that a health care provider may be subject to each appropriate disincentive that an agency has established through notice and comment rulemaking and is applicable to the health care provider.

B. Approach to Determination of Information Blocking and Application of Disincentives

In this section we provide additional detail about the process by which a health care provider that has committed information blocking may be subject to appropriate disincentives for information blocking. This section begins with a discussion, provided for informational purposes and not including any final policies, of an OIG investigation of a claim of information blocking and how OIG intends to refer a health care provider it determines has committed information blocking to an appropriate agency. Next, we discuss our finalized proposals related to the application of a disincentive by an appropriate agency. Finally, we discuss our finalized approach to provide transparency into the nationwide health IT infrastructure by making information available to the public about health care providers that have been determined by OIG to have committed information blocking and have been subject to an appropriate disincentive for information blocking, and about health IT developers of certified health IT and HIEs/HINs and that have been determined by OIG to have committed information blocking.

1. OIG Investigation and Referral

In the Disincentives Proposed Rule, we provided information regarding OIG's anticipated approach to information blocking investigations of health care providers (88 FR 74951 and 74952). We noted that this information was not a regulatory proposal and was provided for information purposes only. Preamble discussion of investigation priorities for health care provider information blocking claims included in the Disincentives Proposed Rule, and restated below, is not binding on OIG and HHS. It does not impose any legal restrictions related to OIG's discretion to choose which health care provider information blocking complaints to investigate. As the discussion in the Disincentives Proposed Rule was not a regulatory proposal, we have not included direct responses to comments provided on this section (III.B.1.). However, to improve public understanding of how OIG anticipates it will approach information blocking investigations of health care providers, this section (III.B.1.) of the preamble provides an informational statement to supplement the discussion set forth in the Disincentives Proposed Rule.

We clarify here that OIG's investigation will depend on the specific facts and circumstances

presented in the allegation. OIG will evaluate each allegation based on the facts and circumstances presented in the allegation. As OIG investigates the allegations, though, the scope of the investigation may change, and OIG may change the individual(s) or entity(ies) under investigation depending on the specific facts and circumstances it has found. Indeed, through conducting an investigation, OIG will collect evidence which it will use to evaluate the individual(s) or entity(ies) with potential information blocking liability and potential information blocking conduct. The vast bulk of material and relevant evidence (that is, evidence relating to whether the actor committed information blocking) will come from the actor whose conduct is at issue.

As part of OIG's investigation, OIG will need to evaluate whether an individual or entity meets the definition of an actor under ONC's regulations. OIG has previously stated that it will look to ONC's regulations and any related guidance in evaluating whether an individual or entity meets a specific actor definition, and OIG will continue to do so for health care provider investigations (88 FR 42828). OIG will look to the regulations in effect at the time the conduct occurred. Based on the definitions ONC has finalized for health IT developer of certified health IT and HIN/HIE, a health care provider, as set forth in 45 CFR 171.102, may meet the definition of a health care provider and one of those definitions as well (88 FR 42829). OIG anticipates being in contact with health care providers as part of its investigation, as necessary, to understand the specific facts and circumstances. For example, OIG may need to engage with the health care provider to understand whether the health care provider is a HIN/HIE or a health IT developer of certified health IT. And as mentioned above, much of the evidence gathered by OIG will likely come from the individual(s) or entity(ies) under investigation.

As part of an investigation, OIG will evaluate whether information blocking has occurred. OIG has previously stated that it will look to ONC's regulations and any related guidance in evaluating whether conduct constitutes information blocking, and OIG will continue to do so with respect to health care providers (88 FR 42827). OIG will look to ONC's information blocking regulations in 45 CFR part 171 in effect at the time the conduct occurred. Through conducting an investigation, OIG will collect evidence, which it will use to evaluate whether conduct constitutes information blocking and whether an actor had the requisite

intent. As mentioned above, OIG anticipates engaging with health care providers during this process as it learns the facts and circumstances of the allegation under investigation.

Regarding the timing of investigations, OIG will not begin investigating health care providers until after the effective date of this rule, and will exercise its enforcement discretion not to make any determinations regarding conduct occurring prior to the effective date of this rule for information blocking disincentives. As OIG will not make a determination on conduct occurring prior to the effective date, OIG will not refer any health care providers based on a determination of conduct occurring prior to the effective date of this rule for information blocking disincentives. This means that no disincentives finalized in this final rule will be applied to conduct occurring before the effective date of this final rule.

a. Anticipated Priorities

As with other conduct that OIG has authority to investigate, OIG has discretion to choose which information blocking complaints to investigate. To maximize efficient use of resources, OIG generally focuses on selecting cases for investigation that are consistent with its enforcement priorities and intends to apply that rationale to its approach for selecting information blocking complaints for investigation.

For investigations of health care providers, the Disincentives Proposed Rule stated that OIG expects to use four priorities: (i) resulted in, are causing, or have the potential to cause patient harm; (ii) significantly impacted a provider's ability to care for patients; (iii) were of long duration; and (iv) caused financial loss to Federal health care programs, or other government or private entities (88 FR 74951). As mentioned in the above section concerning OIG investigations, OIG's expected priorities are informational only and are not binding on OIG decision making.

OIG's priorities for health care provider investigations differ from the priorities set out in the OIG CMP Final Rule, due to the differences in intent. In the OIG CMP Final Rule, OIG stated that it would prioritize actors who had actual knowledge, as actual knowledge is more egregious, when a lower intent is required (that is, when the standard is "knows, or should know") (88 FR 42823). However, under PHSA section 3022(a), the intent requirement for health care providers is that the health care provider "knows" that a practice is unreasonable and is likely to interfere

with, prevent, or materially discourage access, exchange, or use of electronic health information. Because the Cures Act only provides a single intent standard ("knows"), OIG will not consider actual knowledge as part of its priorities for health care provider actors.

Consistent with the OIG CMP Final Rule (88 FR 42822), OIG's enforcement priorities are a tool OIG uses to triage allegations and allocate resources. OIG provides information about its enforcement priorities so the public and stakeholders have a better understanding of how OIG anticipates allocating resources for enforcement. OIG's enforcement priorities will inform decisions about which information blocking allegations to pursue, but these priorities are not dispositive. Each allegation will be assessed to determine whether it implicates one or more of the enforcement priorities, or otherwise merits further investigation and potential enforcement action. There is no specific formula OIG can apply to every allegation that allows OIG to effectively evaluate and prioritize which claims merit investigation.

Although OIG's anticipated priorities are framed around individual allegations, OIG may evaluate allegations and prioritize investigations based in part on the volume of claims relating to the same (or similar) practices by the same entity or individual.

b. Coordination With Other Agencies

This section summarizes the discussion in the OIG CMP Final Rule of the ways ONC, OCR, and OIG will consult, refer, and coordinate on information blocking claims as permitted by the Cures Act (88 FR 42823).

PHSA section 3022(d)(1) states that the National Coordinator may serve as a technical consultant to the Inspector General. OIG will accordingly consult with ONC throughout the investigative process. Additionally, PHSA section 3022(b)(3)(A) provides the option for OIG to refer claims of information blocking to OCR when a consultation regarding the health privacy and security rules promulgated under section 264(c) of HIPAA will resolve such claims. Depending on the facts and circumstances of the claim, OIG will exercise this statutory discretion as appropriate to refer information blocking claims to OCR for resolution. There is no set of facts or circumstances that will always be referred to OCR. OIG will work with OCR to determine which claims should be referred to OCR under the authority provided in PHSA section 3022(b)(3)(A). It is important to note

that while section 3022(b)(3)(A) of the PHSA specifically provides OIG with the authority to refer information blocking claims to OCR, OIG's statutory authority to refer to OCR allegations of violations of the HIPAA Privacy, Security, or Breach Notification Rules¹⁶ is not solely based on PHSA section 3022(b)(3)(A). Thus, OIG's authority to refer to OCR such allegations against health care providers is not limited to claims of information blocking.

Finally, OIG anticipates coordinating with other HHS agencies to avoid duplicate penalties as identified in section 3022(d)(4) of the PHSA. Depending on the facts and circumstances, OIG may also consult or coordinate with a range of other government agencies, including CMS, FTC, or others (88 FR 42823 and 42824).

c. Anticipated Approach to Referral

During an investigation of information blocking by a health care provider, but prior to making a referral, OIG will coordinate with the appropriate agency to which OIG plans to refer its determination of information blocking. This coordination will ensure that the appropriate agency is aware of a potential referral and that OIG provides the information the agency needs to take appropriate action. OIG's referral to the appropriate agency will explain its determination that a health care provider committed information blocking, including meeting the requirements of the intent element of PHSA section 3022(a)(1)(B)(ii).

We note that PHSA section 3022 authorizes OIG to investigate claims of information blocking and requires OIG to refer health care providers to an appropriate agency when it determines a health care provider has committed information blocking, to be subject to appropriate disincentives. Once OIG has concluded its investigation and is prepared to make a referral, it will send information to the appropriate agency indicating that the referral is made pursuant to the statutory requirement in PHSA section 3022(b)(2)(B). As part of the referral, OIG will provide information to explain its determination, which may include: the dates when OIG has determined the information blocking violation(s) occurred; analysis to explain how the evidence demonstrates the health care provider committed information blocking (for instance, that the health care provider's "practice"¹⁷ meets each

¹⁶ 45 CFR parts 160 and 164, subparts A, C, D, and E.

¹⁷ "Practice," as defined in 45 CFR 171.102, means an act or omission by an actor (health care

element of the information blocking definition); copies of evidence collected during the investigation (regardless of whether it was collected by subpoena or voluntarily provided to OIG); copies of transcripts and video recordings (if applicable) of any witness and affected party testimony; and copies of documents OIG relied upon to make its determination that information blocking occurred. OIG may provide additional information as part of its referral based on consultation with the appropriate agency, to the extent permitted by applicable law.

2. General Provisions for Application of Disincentives

Following an investigation through which OIG determines a health care provider has committed information blocking, and OIG's referral of this determination to an appropriate agency, the health care provider may be subject to disincentives that have been established under applicable Federal law through notice and comment rulemaking. In this section, we include general provisions and information related to the application of disincentives. For information on the specific disincentives and further discussion about how each disincentive will be applied, we refer readers to section III.C. of this final rule.

In the Disincentives Proposed Rule, we proposed to add a new subpart J to 45 CFR part 171, entitled "Disincentives for Information Blocking by Health Care Providers" (88 FR 74952 and 74953). We proposed in 45 CFR 171.1000 that this subpart sets forth disincentives that an appropriate agency may impose on a health care provider based on a determination of information blocking referred to that agency by OIG, and certain procedures related to those disincentives. We proposed in 45 CFR 171.1001(a) that health care providers that commit information blocking would be subject to the following disincentives from an appropriate agency based on a determination of information blocking referred by OIG, where applicable. The disincentives proposed for inclusion in 45 CFR 171.1001(a)(1) through (3) corresponded to the appropriate disincentives proposed in section III.C. of the Disincentives Proposed Rule:

- An eligible hospital or CAH as defined in 42 CFR 495.4 is not a meaningful EHR user as also defined in that section;

- A MIPS eligible clinician as defined in 42 CFR 414.1305, who is also a health care provider as defined in 45 CFR 171.102, is not a meaningful EHR user for MIPS as also defined in 42 CFR 414.1305; and

- ACOs who are health care providers as defined in 45 CFR 171.102, ACO participants, and ACO providers/suppliers will be removed from, or denied approval to participate, in the Medicare Shared Savings Program as defined in 42 CFR part 425 for at least 1 year.

We noted that in the future, if we propose to establish additional disincentives, we intend to add such disincentives to the disincentives listed in 45 CFR 171.1001 (88 FR 74953).

We did not receive any comments on these proposals. However, we have modified the regulation text in several ways to increase clarity. First, we have made minor modifications to the language of the proposed "scope" section, in 45 CFR 171.1000, to better reflect language used in this final rule. Second, we have replaced the proposed paragraph (a) from 45 CFR 171.1001, which was redundant with the proposed "scope" section (45 CFR 171.1000), and reorganized the section to clearly reflect that the disincentives finalized in this final rule, and that a health care provider may be subject to, were established by CMS (45 CFR 171.1001(a) as finalized). If we finalize additional disincentives in the future, we will add them to a paragraph under 45 CFR 171.1001 reflecting the appropriate agency that has established the disincentive.

We have finalized, as proposed, the following disincentives in 45 CFR 171.1001(a)(1)–(3):

- An eligible hospital or CAH as defined in 42 CFR 495.4 is not a meaningful EHR user as also defined in that section;
- A MIPS eligible clinician as defined in 42 CFR 414.1305, who is also a health care provider as defined in 45 CFR 171.102, is not a meaningful EHR user for MIPS as also defined in 42 CFR 414.1305; and

- ACOs who are health care providers as defined in 45 CFR 171.102, ACO participants, and ACO providers/suppliers will be removed from, or denied approval to participate, in the Medicare Shared Savings Program as defined in 42 CFR part 425 for at least 1 year.

In the Disincentives Proposed Rule, we proposed in 45 CFR 171.1002(a) through (d) that an appropriate agency that imposes a disincentive or disincentives in § 171.1001(a) would send a notice (using usual methods of

communication for the program or payment system) to the health care provider subject to the disincentive or disincentives (88 FR 74953). We proposed that this notice includes:

- A description of the practice or practices that formed the basis for the determination of information blocking referred by OIG;
- The basis for the application of the disincentive or disincentives being imposed;
- The effect of each disincentive; and
- Any other information necessary for a health care provider to understand how each disincentive will be implemented.

In the Disincentives Proposed Rule we stated that the information in this notice would be based upon the authority used to establish the disincentive and policy finalized by the agency establishing the disincentive (88 FR 74953). For instance, the notice may contain specific information regarding when a disincentive would be imposed, which may be contingent on both the authority used to establish the disincentive and the specific policy under which the disincentive is established. We noted that, where a health care provider that has been determined to have committed information blocking is subject to multiple disincentives established by an appropriate agency, nothing in this proposal would prevent the appropriate agency from combining these notices into a single communication.

Comments. One commenter requested clarification regarding whether the proposal to send a notice to the health care provider subject to the disincentive implies that all health care providers who have been identified as alleged information blockers will receive a disincentive.

Response. A health care provider would only be subject to a disincentive or disincentives and receive the notification described in this section after a determination has been made by OIG that the health care provider committed information blocking and OIG has referred that determination to the appropriate agency, which is CMS for the purposes of the disincentives finalized in this rule. A health care provider that is merely alleged to have committed information blocking but has not been investigated and determined by OIG to have committed information blocking, would not receive a notification described in this section.

Comments. One commenter expressed support for the proposed notification policies and stated that these policies would improve transparency.

provider, health IT developer of certified health IT, health information network or health information exchange).

Response. We thank the commenter for their support.

Comments. A few commenters recommended adding information or a communications channel so that health care providers who have been notified of a disincentive can respond to or communicate with OIG and the agency issuing the disincentive regarding the finding, possible mitigating circumstances, or establish a process to deter further cases of information blocking. One commenter observed that this would increase transparency, avoid patient confusion, and mitigate potential unnecessary reputational damage. One commenter expressed concern that the proposed notifications only inform health care providers of a disincentive after they have been found to have committed information blocking. This commenter expressed concern that a health care provider found to have committed information blocking may have additional practices being investigated or practices that could lead to another finding of information blocking and that these practices would not be included in the notification, for example, for them to fix potential issues. This commenter recommended creating a form notification that would inform health care providers of the information blocking issues that have led to the disincentive so they could be fixed.

Response. We appreciate commenters' concerns and wish to clarify that the notifications proposed in this section would be issued by an appropriate agency following a referral of a determination of information blocking by OIG that leads to the imposition of a disincentive. For discussion of when communication between OIG and a health care provider about alleged information blocking practices may occur as part of an investigation (that is, prior to a determination of information blocking), we refer readers to section III.B.1. of this final rule.

After consideration of the public comments, we have finalized our proposal with modification. In the Disincentives Proposed Rule, we proposed in § 171.1002 that an appropriate agency “would send a notice to the health care provider subject to the disincentive or disincentives.” However, we believe that the use of the affirmative “shall,” which we have finalized in the text of § 171.1002, to describe the action of an appropriate agency will provide greater clarity to health care providers and better conveys the intent of the policy, which is that an appropriate agency will send this notice in all cases in which disincentives have been imposed on a

health care provider. For the finalized text of § 171.1002, we also revise our proposed reference to disincentives “specified in § 171.1001(a)” to refer to disincentives “specified in § 171.1001” instead, since we have finalized that disincentives may be listed throughout § 171.1001 and not only under paragraph (a), which specifically lists disincentives established by CMS. Therefore, we have finalized in 45 CFR 171.1002 that an appropriate agency that imposes a disincentive or disincentives in § 171.1001 shall send a notice (using usual methods of communication for the program or payment system) to the health care provider subject to the disincentive or disincentives. We have finalized in 45 CFR 171.1002(a) through (d) the elements of the notice as proposed.

In the Disincentives Proposed Rule, we noted that, following the application of a disincentive, a health care provider, as defined in 45 CFR 171.102, may have the right to appeal administratively a disincentive if the authority used to establish the disincentive provides for such an appeal (88 FR 74953). We noted that PHSA section 3022(b)(2)(C) requires that the imposition of CMPs that apply to health IT developers of certified health IT, and HINs/HIEs, that have committed information blocking, follow the procedures of SSA section 1128A, which includes procedures for appeals. However, the Cures Act did not provide similar instruction regarding administrative appeals of disincentives for health care providers established under PHSA section 3022(b)(2)(B), and we did not propose a specific administrative appeals process for health care provider appeals. Therefore, any right to appeal administratively a disincentive, if available, would be provided under the authorities used by the Secretary to establish the disincentive through notice and comment rulemaking.

To provide additional information on these issues to the public, we summarize and respond to comments on our statement regarding appeals.

Comments. Many commenters expressed concern that there is not a clearly defined appeals process that would apply across all provider types. Many of these commenters recommended that HHS adopt a single appeals process through notice and comment rulemaking. Many commenters expressed concern that relying on each program's appeals process creates an unfair structure in which providers do not have equal appeal rights. Some of these commenters further stated that this could require some providers to appeal

multiple times and that other providers may not be able to appeal at all. Some commenters stated that the differing appeals processes could create undue administrative burden, with some requesting a single or streamlined process. A few commenters recommended that HHS ensure that any future disincentives for other provider types also allow for a clear and straightforward appeals process.

Response. As noted in the Disincentives Proposed Rule, PHSA section 3022(b)(2)(C) requires that the imposition of CMPs that apply to health IT developers of certified health IT, and HINs/HIEs, that have committed information blocking, follow the procedures of SSA section 1128A, which includes procedures for administrative appeals (88 FR 74953). The Cures Act did not provide similar instruction regarding administrative appeals of appropriate disincentives for health care providers established under PHSA section 3022(b)(2)(B), and we did not propose and have not finalized any regulations relating to administrative appeals of the imposition of disincentives. Instead, we reiterate that any right to appeal administratively a disincentive, if available, would be provided under the authority used by the Secretary to establish a disincentive.

Section 3022(b)(2)(B) of the PHSA requires that an OIG determination be referred to the appropriate agency to “be subject to appropriate disincentives using authorities under applicable Federal law.” In establishing disincentives using authorities under applicable Federal law, any administrative appeals processes required under those existing authorities would also apply to the disincentives established by an appropriate agency under that authority. We recognize that reliance on any administrative appeals processes under the authority used to establish a disincentive may result in variability in the appeals processes available to health care providers, and that in some cases, administrative appeals processes may be limited or unavailable. However, we disagree that establishing a new single process for administrative appeals would effectively address this variability, as such a process may conflict with, or duplicate, administrative review or appeals processes available under existing authorities. Accordingly, we did not propose such a process in the Disincentives Proposed Rule.

If we establish additional disincentives in the future, we will evaluate any administrative review or appeals process available under the

authority used to establish the disincentive and how a disincentive would be treated under such a process. However, we decline to limit future disincentives to those which provide for administrative appeals processes meeting certain standards, as we must balance these considerations with our goal of identifying disincentives for all health care providers subject to the information blocking regulations, as defined in 45 CFR 171.102.

Comments. Many commenters provided recommendations for elements that should be incorporated into an appeals process. Commenters recommended that all health care providers should have the ability to appeal an information blocking determination by OIG before referral or application of a disincentive, as well as the ability to appeal the application and calculation of the disincentive. Other commenters recommended that HHS include evaluation criteria and definitions of intent within the appeals process to ensure transparency. A few commenters suggested that health care providers have the ability to provide further information that may impact a determination. Some commenters recommended entities that the commenters asserted would be appropriate to handle the appeals; the specific entities that commenters recommended were OIG, CMS, ONC, HHS, an Administrative Law Judge, or an impartial agency not involved in the finding or disincentive. Some commenters recommended that HHS ensure that the entity reviewing appeals have sufficient technical expertise to review the OIG finding.

Some commenters recommended potential models for the appeals process, including the process described for ACOs in the Disincentives Proposed Rule, the process established for health IT developers of certified health IT, HINs/HIEs, Medicare programs, and the process for appealing enforcement of the rules promulgated under the Administrative Simplification provisions of HIPAA. Some commenters recommended that HHS clearly define the timelines for the appeals process and build these into the timeline for applying disincentives.

Response. We appreciate commenters' recommendations regarding elements that should be included in an administrative appeals process, as well as recommendations regarding existing appeals processes that would be an appropriate model for review and appeal of disincentives. However, we did not propose to establish a single process for the administrative appeal of either a determination by OIG of

information blocking or a disincentive imposed by an appropriate agency based on a referral of a determination of information blocking. Instead, the ability of a health care provider subject to a disincentive to appeal administratively the specific items identified by commenters, including the information blocking determination by OIG, the determination that information blocking conduct met the required intent standard, the application of a disincentive, and the calculation of the disincentive, would be based on the scope of any administrative appeal rights provided under the authority used to establish an appropriate disincentive. Likewise, any timelines for an administrative appeals process may depend upon timelines already established related to administrative appeal rights under the authority used to establish a disincentive.

We appreciate the comment regarding technical expertise in review of any administrative appeals of a disincentive. While the responsibility for reviewing an appeal administratively would be determined by the authority under which the disincentive has been established and could vary across disincentives, we expect that other agencies, such as ONC, could potentially provide technical assistance to an appropriate agency as part of any administrative appeals process that is available and exercised by a health care provider. We encourage readers to review the information in section III.C. of this final rule where CMS provides further discussion of relevant policies related to administrative appeal, review, and reconsideration under authorities used to establish disincentives.

Comments. One commenter requested clarification about the impact an appeal would have on the application of a disincentive and the proposed posting of information on the ONC website.

Response. Regarding the impact an appeal would have on the application of a disincentive, we reiterate that any right to appeal administratively a disincentive, if available, would be provided under the authorities used by the Secretary to establish the disincentive. Therefore, the impact of any appeal rights provided for by a specific authority would depend on that authority. We encourage readers to review the information in section III.C. of this final rule where CMS provides further discussion of relevant policies related to appeal, review, and reconsideration under authorities used to establish disincentives.

As discussed further in section III.B.3. of this final rule regarding our proposal for posting of information on ONC's

website, we have finalized our proposal regarding information that will be publicly posted on ONC's website about actors that have been determined by OIG to have committed information blocking (specifically, where the actor is a health care provider, the health care provider's name, business address (to ensure accurate provider identification), the practice found to have been information blocking, including when the practice occurred, the disincentive(s) applied, and where to find additional information, where available, about the determination of information blocking that is publicly available via HHS or another part of the U.S. Government). Further, we have finalized at 45 CFR 171.1101(a)(2) that the information specified in 45 CFR 171.1101(a)(1) will not be posted prior to a disincentive being imposed and will not include information about a disincentive that has not been applied. As noted in section III.B.3., we have modified our finalized policy to provide further clarification that posting of information about a disincentive will not occur until after any available administrative appeals process has been completed.

Comments. One commenter recommended not applying disincentives in any program that does not have an appeals process that would allow health care providers to appeal the finding and the disincentive.

Response. We appreciate the commenter's recommendation. However, we decline to limit the establishment of disincentives to those disincentives which can be established using authorities that provide for administrative appeal rights meeting certain standards. Since we must establish disincentives using authorities under applicable Federal law as required under PHSA section 3022(b)(2)(B), we must balance our interest in providing for administrative appeal rights with a limited set of available authorities which can be used to establish appropriate disincentives. We believe that focusing only on those authorities which provide for a specific set of administrative appeal rights would limit our ability to meet our goal of establishing appropriate disincentives for the health care providers subject to the information blocking regulations, as defined in 45 CFR 171.102.

We did not propose to establish a single administrative appeals process for health care providers to appeal the application of disincentives being finalized in this rule. We reiterate that any right to appeal administratively a disincentive, if available, would be provided under the authorities used by

the Secretary to establish the disincentive.

3. Transparency for Information Blocking Determinations, Disincentives, and Penalties

In the Disincentives Proposed Rule, we stated that it is important to promote transparency about how and where information blocking is impacting the nationwide health information technology infrastructure (88 FR 74953). We further stated that publicly releasing information, including applicable public settlements, penalties, and disincentives, about actors that have been determined by OIG to have committed information blocking can inform the public about how and where information blocking is occurring within the broader health information technology infrastructure.

PHSA section 3001(c)(4) (42 U.S.C. 300j–11(c)(4)) requires that the National Coordinator maintain an internet website “to ensure transparency in promotion of a nationwide health information technology infrastructure.” We believe this provision provides the National Coordinator with the authority to post information on OIG’s website if that information has an impact on issues relating to transparency in the promotion of a nationwide health information technology infrastructure. In the Disincentives Proposed Rule, we proposed to add a new subpart K to 45 CFR part 171, entitled “Transparency for Information Blocking Determinations, Disincentives, and Penalties” (88 FR 74953). As proposed in 45 CFR 171.1100, this subpart would set forth the information that would be publicly posted on OIG’s website about actors that have been determined by OIG to have committed information blocking.

We proposed in 45 CFR 171.1101 that, in order to provide insight into how and where information blocking conduct is impacting the broader nationwide health information technology infrastructure, OIG would post on its public website information about actors that have been determined by OIG to have committed information blocking (88 FR 74953). For health care providers that are subject to a disincentive, we proposed in 45 CFR 171.1101(a)(1) that the following information would be posted: health care provider’s name, business address (to ensure accurate provider identification), the practice found to have been information blocking, the disincentive(s) applied, and where to find additional information, where available, about the determination of information blocking that is publicly available via HHS or

another part of the U.S. Government. We proposed in 45 CFR 171.1101(a)(2) that the information specified in 45 CFR 171.1101(a)(1) would not be posted prior to a disincentive being imposed and would not include information about a disincentive that has not been applied.

We recognized that under the authorities used to establish the disincentives proposed in section III.C. of the Disincentives Proposed Rule, an appropriate agency may have other obligations related to the release of information about a participant that is a health care provider (as defined in 45 CFR 171.102) in programs under that authority (88 FR 74953 and 74954). For instance, under SSA section 1848(q)(9)(C), MIPS eligible clinicians have a right to review information about their performance in MIPS prior to having this information publicly posted on the Compare Tool in accordance with 42 CFR 414.1395. Therefore, we proposed in 45 CFR 171.1101(a)(3) that posting of the information about health care providers that have been determined to have committed information blocking and have been subject to a disincentive would be conducted in accordance with existing rights to review information that may be associated with a disincentive specified in 45 CFR 171.1001. For instance, where a health care provider, as defined in 45 CFR 171.102, has a statutory right to review performance information, this existing right would be exercised prior to public posting of information regarding information blocking on the website described above.

In order to provide insight into how and where information blocking conduct is impacting the broader nationwide health information technology infrastructure, we also proposed in 45 CFR 171.1101(b)(1) to post on OIG’s public website information specified in 45 CFR 171.1101(b)(1) about health IT developers of certified health IT and HINs/HIEs that have been determined by OIG to have committed information blocking and have either resolved their CMP liability with OIG or had a CMP imposed by OIG for information blocking under subpart N of 42 CFR part 1003 (88 FR 74954). To ensure accurate identification of actors, we proposed in 45 CFR 171.1101(b)(1) to post the type of actor (for example, HINs/HIEs or health IT developers of certified health IT) and the actor’s legal name, including any alternative or additional trade name(s) under which the actor operates.

The last information we proposed to post on our public website, for all actors, would be the two types of

information mentioned above regarding health care providers (88 FR 74954). First, in 45 CFR 171.1101(a)(1)(iii) and (b)(1)(iii), we proposed to post a description of the practice, as the term is defined in 45 CFR 171.102 and referenced in 45 CFR 171.103, found to have been information blocking. In the case of a resolved CMP liability, we would post the practice alleged to be information blocking. This information will help provide transparency into how information blocking conduct is impacting the nationwide health information technology infrastructure, and in particular, specific practices that are impacting the infrastructure. Second, in 45 CFR 171.1101(a)(1)(v) and (b)(1)(iv), we proposed to post where to find additional information about the determination (or resolution of CMP liability) of information blocking that is publicly available via HHS or, where applicable, another part of the U.S. Government. This information could include hyperlinks and other information, to help interested persons find any additional information about the determination, settlement, penalty, or disincentive that has been made publicly available by the U.S. Government. Such publicly available information would include any summaries or media releases that may be posted by OIG, or another part of HHS, on their internet website(s). It could also include additional information that may be made publicly available about the determination by or other parts of the U.S. Government. For example, if an actor who has exhausted applicable administrative appeal procedures and brought action in a Federal court for review of the decision that has become final, we could post information on our website about the existence of the court action and where or how to access information about the determination, or resulting court action, that has been made publicly available by the court. This information would provide additional context for how information blocking conduct is impacting the nationwide health information technology infrastructure.

In the Disincentives Proposed Rule, we stated that publicly posting information about actors that have been determined by OIG to have committed information blocking is important for providing transparency into how and where information blocking conduct is occurring within and impacting the broader nationwide health information technology infrastructure (88 FR 74954). Between April 5, 2021, and September 30, 2023, we received over 800 claims of information blocking through the

Report Information Blocking Portal.¹⁸ We publicly post information about these claims, which we update monthly. Beyond posting the number of claims, the posted information includes claim counts by type of claimant and claim counts by potential actor.¹⁹ While OIG has not necessarily evaluated whether these claims qualify as information blocking, this information provides transparency about how participants in the nationwide health IT infrastructure perceive actions by actors that are part of the same infrastructure, which is intended to support the access, exchange, and use of EHI. A natural progression of the posting of such information is the posting of information about actual information blocking determinations by OIG, including any disincentives applied to health care providers. This information can help the public understand how the information blocking regulations, which seek to prevent and address practices that unreasonably or unnecessarily interfere with lawful access, exchange, or use of EHI through the nationwide health IT infrastructure, are being enforced. It would also provide clarity regarding how and where actors are engaging in information blocking practices within the nationwide health IT infrastructure. Based on this information, participants in the nationwide health IT infrastructure, as well as members of the general public, can confirm or dispel perceptions of information blocking within that infrastructure. Additionally, the combined transparency into the processes Congress authorized and instructed HHS to implement (that is, ONC implementing a claims reporting process, disincentives for applicable actors found to have committed information blocking by OIG) would foster public confidence in the information blocking enforcement framework and potentially encourage public participation in that framework, whether by submitting a claim of information blocking or participating in an OIG information blocking investigation. We invited public comments on these proposals, including comments on whether we should publicly post additional information (and why) about health care providers, health IT developers of certified health IT, or HINs/HIEs that have been determined by OIG to have committed information blocking.

The following is a summary of the comments we received and our responses.

Comments. Many commenters supported the proposal to publicly post information about actors that have been determined to have committed information blocking. Several commenters expressed that the proposal would increase transparency by: providing a better understanding for the healthcare community, including patients, about information blocking practices and how they are assessed by HHS; providing greater visibility to regulators and other health system stakeholders on the gaps and barriers to information sharing; showing the degree to which healthcare data is currently being blocked; supporting patients in making informed decisions about future care; and providing health care providers with information about health IT developers of certified health IT and HINs/HIEs. Several commenters expressed that public posting will further help prevent information blocking violations, enhance accountability, and drive improvements.

Response. We thank commenters for the support of our proposal to publicly post information about actors that have been determined to have committed information blocking and, in the case of health care providers, have been subject to a disincentive.

Comments. A few commenters supported the proposal, in 45 CFR 171.1101(a)(3), that posting of the information specified in 45 CFR 1101(a)(1) about health care providers that have been determined to have committed information blocking and have been subject to a disincentive would be conducted in accordance with existing rights to review information that may be associated with the applied disincentive. Other commenters expressed concern over not having the ability to review what information is posted prior to the information being publicly posted and recommended being able to review the information for accuracy before posting. One commenter expressed concern that health care provider information could be erroneously posted and the burden to correct any inaccurate postings would fall upon the provider after the fact.

Response. We thank commenters for their comments. We did not propose a unique process by which health care providers would be provided an opportunity to review information prior to posting on ONC's website. The information that would be posted is basic information about the health care provider and the information blocking determination (for example, provider

name and address, practice found to be information blocking, disincentive(s) applied, and where to find additional information about the determination of information blocking that is publicly available via HHS or, where applicable, another part of the U.S. Government) that would be derived and confirmed through the OIG investigation and referral to CMS. HHS will work with healthcare providers to correct any clerical errors in these information elements to be posted prior to the information being posted on ONC's website or to correct such information after posting.

Further, in the Disincentives Proposed Rule, we recognized that an appropriate agency may have other program obligations related to release of information about a participant that is a health care provider (as defined in 45 CFR 171.102) in such programs (88 FR 74953 and 74954). On this basis, we proposed at 45 CFR 171.1101(a)(3) that posting of the information about health care providers that have been determined to have committed information blocking and have been subject to a disincentive would be conducted in accordance with existing rights to review information that may be associated with a disincentive specified in 45 CFR 171.1001. For instance, where a health care provider, as defined in 45 CFR 171.102, has a statutory right to review performance information, this existing right would be exercised prior to public posting of information regarding information blocking on the website described above. We believe that establishing an additional review process could potentially conflict with or duplicate these existing statutory review rights, such as review rights provided under MIPS at SSA section 1848(q)(9)(C).

Comments. Many comments recommended against public posting until after a health care provider has completed an appeals process. Many commenters also recommended not publicly posting information on the ONC website if the actor(s) are conducting or have completed educational or corrective steps, including providing a period of one or more years for actors to complete corrective actions or come into compliance before public posting.

Response. We did not propose a single administrative appeals process for information blocking disincentives. Instead, as described in section III.B.2. of this final rule, any right to appeal administratively a disincentive, if available, would be provided under the authorities used by the Secretary to establish a disincentive through notice

¹⁸ For more information, see: "Information Blocking Claims: By the Numbers," <https://www.healthit.gov/data/quickstats/information-blocking-claims-numbers>.

¹⁹ *Ibid.*

and comment rulemaking. In proposing at 45 CFR 171.1101(a)(2) that information will not be posted prior to a disincentive being imposed and will not include information about a disincentive that has not been applied, we intended to capture scenarios where a health care provider may have a right to administratively appeal under the authority used to establish the disincentive. Our intent was to be consistent with our proposal for health IT developers of certified health IT and HIN/HIEs in 45 CFR 171.1101(b)(2), which states that information will not be posted on ONC's website until a CMP has become final consistent with the procedures in subpart O of 42 CFR part 1003, which include procedures for an appeal of a CMP. However, we believe that additional clarity regarding the issue of appeals highlighted by the commenters is necessary to ensure the language reflects our intended policy. Therefore, we have finalized a modification to the provision in 45 CFR 171.1101(a)(2) to add that information will not be posted prior to the completion of any administrative appeals process pursued by the health care provider, for example, an appeals process provided for under the authority used to establish the disincentive.

For health care providers, we note that we did not propose, and have not finalized, corrective action options for those health care providers that OIG has determined to have committed information blocking, including remedial actions, to avoid public posting. Regarding corrective action plans for health IT developers of certified health IT or HINs/HIEs, we refer readers to the discussion in the OIG CMP Final Rule, in which OIG states that it does not anticipate using alternatives to CMPs such as corrective action plans at the time of the final rule but may consider such approaches in the future (88 FR 42824).

Comments. One commenter stated that public posting should not be implemented until all health care providers are equally disincentivized for information blocking. Another commenter urged ONC to delay the launch of this website until regulated health care providers and the relevant Federal agencies have had experience with investigations and referrals for disincentives and actors have received clearer guidance.

Response. We acknowledge commenters' concerns that this final rule does not finalize disincentives that apply to all the types of health care providers included in the health care provider definition at 45 CFR 171.102. However, it is important to begin

providing transparency about those health care providers to whom the disincentive(s) finalized in this rule are applied in order to begin providing the public with transparency about how and where information blocking is impacting the nationwide health information technology infrastructure.

PHSA section 3001(c)(4) requires that the National Coordinator maintain an internet website "to ensure transparency in promotion of a nationwide health information technology infrastructure." The website where the information would appear is not a new website but rather the current ONC website.²⁰ We disagree that posting on the website should be delayed until regulated health care providers and Federal agencies have had experience with investigations and referrals for disincentives. Federal agencies have experience with investigations and referrals, and health care provider information already appears on several websites throughout the Federal government. We also provide data on the ONC website about claims or suggestions of possible information blocking collected through the Report Information Blocking Portal²¹ and education resources and guidance on the information blocking regulations on the ONC website.²²

Comments. Some commenters stated that posting health care provider information is a second penalty on top of the monetary disincentive. One commenter asked if public posting is considered a disincentive and recommended it be classified as such. Several commenters expressed concerns about the proposal to list the names of actors determined to have engaged in information blocking on ONC's website, stating that this provision will do little to advance transparency regarding the impact of information blocking on the nationwide health information technology infrastructure but will result in public shaming of actors who have already been penalized for their conduct.

Response. We do not agree with commenters that publicly posting health care provider names constitutes a disincentive. We also disagree with commenters that the posting of health care provider names would be sufficient to deter information blocking, consistent with our discussion of appropriate disincentives in section III.A.3. of this final rule. We note that the

disincentives CMS proposed and has finalized in this final rule would each potentially result in a consequence for a health care provider that has been determined by OIG to have committed information blocking, which CMS has stated would deter information blocking practices. The posting of information about health care providers that have committed blocking and been subject to a disincentive does not reflect a consequence commensurate with an OIG determination that the health care provider committed information blocking or the disincentives CMS has finalized.

Last, we disagree that the posting of health care provider names following the imposition of a disincentive as part of the information publicly posted on ONC's website will not advance transparency about information blocking practices. As we have stated, the purpose of posting health care provider names is to ensure transparency in promotion of a nationwide health information technology infrastructure, as we explain elsewhere in this final rule.

Comments. A few commenters did not support public posting due to the delay from when the information blocking practice may have occurred and when the information would be publicly posted, stating that public posting after an actor has completed corrective action would unfairly label them information blockers and impose reputational harm after they have already come into compliance. One commenter specifically expressed concern with the delay in timing from when the information blocking act may have occurred to when the information would be publicly posted, because it may result in current health care providers operating under an organizational TIN being punished for conduct committed by persons who no longer operate under that TIN and that this could steer patients away from these health care providers to the patient's detriment. A few commenters expressed concern that a group of health care providers could suffer reputational harm from public posting based on a single actor, for instance, commenters expressed concerns about potential harm from public posting information about health care providers who are not involved in the information blocking or commit inadvertent acts.

Response. We appreciate commenters' concerns regarding the period of time which may exist between the occurrence of the information blocking conduct and the posting of information following the imposition of a disincentive. We note that we did not

²⁰ For more information, see: <https://www.healthit.gov/>.

²¹ For more information, see: <https://www.healthit.gov/data/quickstats/information-blocking-claims-numbers>.

²² For more information, see: <https://www.healthit.gov/topic/information-blocking>.

propose to establish a corrective action plan or other process to allow any health care provider to demonstrate compliance with the information blocking regulations following a determination by OIG that a practice is information blocking. We also remind readers that the definition of information blocking for health care providers requires that the health care provider “knows” that a practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information. This means there would not be posting of unintentional, inadvertent acts of health care providers. While a health care provider may subsequently pursue efforts to cease the information blocking practice which resulted in the imposition of a disincentive, it is still beneficial for the public to be able to understand how and where information blocking is impacting the nationwide health information technology infrastructure, including what aspects of that infrastructure are being impacted by health care providers.

Regarding health care providers operating under or employed by a larger entity, we note that under the regulations we have finalized, the information posted on ONC’s website will be specific to the health care provider that OIG has determined has committed information blocking and that has been subject to a disincentive. If OIG determines that a health care provider who is an individual has committed information blocking and refers that individual to an appropriate agency, and the individual is subject to a disincentive, ONC would post only information regarding the individual, not any other entities with which the individual is associated. If OIG determines that a health care provider that is an entity, such as a group practice, has committed information blocking, and the entity is subject to a disincentive, ONC would post information about the entity.

Comments. Some commenters recommended ONC use certain criteria or thresholds in order to decide whether to publicly post information about a health care provider for information blocking. Commenters recommended that ONC consider the following factors before determining whether to publicly post information, including: whether there is frequent, repeat, or significant information blocking, as opposed to minor conduct undertaken in good faith; whether the public would benefit from the information; whether the actor has corrected the information blocking; and time since the information blocking

occurred. Other commenters recommended drawing greater attention to repeat offenders and actors who continue to perform the same type of information blocking for an extended period of time over actors who had a single violation that they remediated quickly.

Response. We appreciate commenters’ suggestions, but we did not propose to utilize criteria to determine whether to publicly post information about a health care provider and decline to adopt them in this final rule. We believe it is important to provide transparency with respect to any determination of information blocking that has resulted in a health care provider being subject to a disincentive in order to increase understanding about how and where information blocking is impacting the nationwide health information technology infrastructure, including the scope of information blocking practices that have resulted in disincentives.

Regarding the suggested factor which referenced “minor conduct undertaken in good faith,” we remind readers, as we did in a prior response, that information blocking has an element of intent. For health care providers, that intent is that the health care provider knows that a practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information.

We also remind readers that, as discussed in III.B.1.a. of this final rule, OIG expects to use four priorities to inform decisions about which information blocking allegations to pursue: (i) resulted in, are causing, or have the potential to cause patient harm; (ii) significantly impacted a provider’s ability to care for patients; (iii) were of long duration; and (iv) caused financial loss to Federal health care programs, or other government or private entities. However, these priorities are not dispositive. OIG will assess each allegation to determine whether it implicates one or more of the enforcement priorities, or otherwise merits further investigation and potential enforcement action, and OIG may evaluate allegations and prioritize investigations based in part on the volume of claims relating to the same (or similar) practices by the same entity or individual.

Comments. A few commenters recommended that only deidentified actor information be posted, at least initially. One commenter did not support public posting of obstetrician-gynecologists’ names, practice information and information blocking determination, expressing concern about criminalization and scrutiny of

reproductive healthcare data. One commenter recommended that rather than listing the details of information blockers, ONC list all health care providers who are successfully exchanging information.

Response. We disagree with the commenter that only deidentified actor information should be publicly posted. The identification of health care providers that have committed information blocking is important for the public to be aware of the particular circumstances in which information blocking is occurring and, therefore, to understand which aspects of the nationwide health information technology infrastructure are being impacted. We also disagree with the commenter that we should not publicly post information regarding obstetrician-gynecologists. If a health care provider has been determined by OIG to have committed information blocking and is subject to a disincentive, we will post information regardless of their specialty or practice. To promote transparency, we believe it is important to release information about actors that have been determined by OIG to have committed information blocking to inform the public about how and where information blocking is occurring within the broader health information technology infrastructure. For more information about concerns regarding withholding electronic health information related to reproductive health care, we refer readers to a May 13, 2024, blog post on ONC’s website²³ that explains how the “HIPAA Privacy Rule to Support Reproductive Health Care Privacy” final rule (89 FR 32976), which appeared in the **Federal Register** on April 26, 2024, and the information blocking regulations work together to protect the privacy of such health information.

Regarding the recommendation to post information about those health care providers that are successfully exchanging information, we note that we did not propose to do so in the Disincentives Proposed Rule and decline to finalize such a policy in this final rule. We also note that some of this type of information may be made available through existing mechanisms. For instance, the Medicare Promoting Interoperability Program and MIPS Promoting Interoperability performance category involve public reporting components about health care provider performance in these programs, which

²³ See: <https://www.healthit.gov/buzz-blog/information-blocking/supporting-information-privacy-for-patients-now-and-always-four-reminders-of-how-hhs-information-blocking-regulations-recognize-privacy-rules>.

can reflect successful performance on measures of health information exchange that contribute to performance under these programs.

Comments. A few commenters recommended posting the year or timeframe in which the information blocking violation occurred. Several commenters recommended establishing a time limit on posting the information to the website by which to remove health care providers from the information blocking list on the website.

Response. We thank commenters for the recommendation to include the timeframe during which the information blocking occurred as part of the information we are publicly posting. We stated in the Disincentive Proposed Rule that we sought to help the public understand “how” and “where” information blocking is occurring within the broader health information technology infrastructure (88 FR 74953). We agree that information about when information blocking occurred is a critical piece of information and that this concept is implicit in our interest in providing transparency regarding “how” and “where” information blocking occurred to support understanding of the scope of information blocking practices over time that impact the nationwide health information technology infrastructure. To this point, knowing when information blocking occurred is part of knowing how it occurred. Without this information, the public, including other health care providers, would not know whether a particular practice determined to be information blocking was a recent occurrence that may have implications for their own recent or current interactions with the health care provider that was found to have committed information blocking; or whether the practice occurred at a time when such health care providers had no interactions with the health care provider found to have committed information blocking. Therefore, we agree with commenters that it would be appropriate to explicitly identify the timeframe as part of the “description of the [information blocking] practice” that we proposed to include in the information for posting in 45 CFR 171.1101(a)(1)(iii) for health care providers and 45 CFR 171.1101(b)(1)(iii) (88 FR 74954). Accordingly, we have modified the language in 45 CFR 171.1101(a)(1)(iii) and 45 CFR 171.1101(b)(1)(iii) to clarify that the description of the practice includes when the practice occurred.

We did not propose to put a time limit on how long the information would be posted on ONC’s website, and we are

not adopting the commenter’s recommendation. We may consider this recommendation in future rulemaking.

Comments. One commenter expressed concern that HHS could further use the posted information to apply additional disincentives or bar a physician from participation in other programs and that additional rulemaking would be needed for such uses.

Response. We appreciate the commenter’s concern; however, we note that the imposition of a disincentive would be based on a referral from OIG of its determination that a health care provider committed information blocking, rather than the public posting of information on ONC’s website. Moreover, we note that we have finalized that the disincentives established for health care providers pursuant to PHSA section 3022(b)(2)(B) are listed in 45 CFR 171.1001. Other actions not listed in 45 CFR 171.1001 taken by Federal programs based on the information publicly posted on ONC’s website would not be a disincentive and are outside the scope of this final rule.

Comments. One commenter stated that public posting of information would lead to unintended consequences such as distrust or an adversarial relationship between actors subject to the information blocking regulations and HHS. Another commenter expressed concern that public posting, combined with the potential for significant disincentives, would deter information blocking complaints. The commenter stated that the health data interoperability community is dependent upon good working relationships between individuals and organizations that operate in the space and that a complainant may refrain from submitting information blocking claims in order to maintain a good relationship with the individual or entity alleged to have committed information blocking.

Response. We appreciate commenters’ input but believe that the value of publicly posting this information outweighs any concerns about increasing distrust between health care providers and HHS or between health care providers and other entities supporting health information exchange. We note that information blocking negatively impacts health care providers by limiting access to electronic health information that may be necessary for effective care delivery and suggest that all parties committed to increasing the exchange of electronic health information should support the public availability of information about how and where information blocking is impacting the nationwide health information technology infrastructure.

After consideration of the public comments, we have finalized these proposals with the modifications discussed above.

C. Appropriate Disincentives for Health Care Providers

In the Disincentives Proposed Rule, we proposed to establish a set of disincentives for health care providers that have committed information blocking (88 FR 74954 through 74966). We noted that each of the proposed disincentives would be imposed by CMS following a referral of a determination of information blocking by OIG. We stated that each of the disincentives was being proposed using authorities under applicable Federal law, consistent with PHSA section 3022(b)(2)(B).

1. Background

a. Impacted Health Care Providers

In the Disincentives Proposed Rule, we stated that the proposed disincentives would apply to a subset of the individuals and entities meeting the information blocking regulations’ definition of health care provider at 45 CFR 171.102 (88 FR 74954 and 74955). As discussed hereafter, this rule establishes disincentives for health care providers (as defined in 45 CFR 171.102) that are also eligible to participate in certain Federal programs: the Medicare Promoting Interoperability Program and the MIPS Promoting Interoperability performance category (previously the EHR Incentive Programs); and the Medicare Shared Savings Program.

In the Disincentives Proposed Rule, we recognized that the disincentives proposed would only apply to certain health care providers and that the information blocking regulations are also applicable to health care providers that are not eligible to participate in these programs (88 FR 74955). However, the policies we have finalized in this rule are a first step that focuses on authorities that pertain to certain health care providers that furnish a broad array of healthcare services to large numbers of Medicare beneficiaries and other patients. We believe optimal deterrence of information blocking calls for imposing appropriate disincentives on all health care providers (as defined at 45 CFR 171.102) determined by OIG to have committed information blocking. In section IV. of this final rule, we acknowledge public comments received in response to a request for information on establishing disincentives, using applicable Federal law, that could be

imposed on a broader range of health care providers.

b. Impact of Disincentives

In the Disincentives Proposed Rule, we stated that we believe the proposed disincentives would deter information blocking by health care providers. However, we recognized that the actual monetary impact resulting from the application of the disincentives may vary across health care providers subject to the disincentive (88 FR 74955). For example, the disincentive proposed in section III.C.3. of the Disincentives Proposed Rule, for the MIPS Promoting Interoperability performance category, would result in an adjustment to payments under Medicare Part B to MIPS eligible clinicians (as defined in 42 CFR 414.1305). This disincentive would reduce to zero the Promoting Interoperability performance category score of any MIPS eligible clinician that has been determined by OIG to have committed information blocking (as defined at 45 CFR 171.103) during the calendar year (CY) of the referral of a determination from OIG. However, the actual financial impact experienced by a health care provider because of this proposed disincentive being applied in MIPS would vary. For example, Part B payments to the MIPS eligible clinician are subject to a MIPS payment adjustment factor, which CMS determines based on the MIPS eligible clinician's final score. We noted that, in determining each MIPS eligible clinician's final score, CMS considers the assigned weight of, and the MIPS eligible clinician's performance in, the four MIPS performance categories, including the Promoting Interoperability performance category. The MIPS eligible clinician's final score then determines whether the eligible clinician earns a negative, neutral, or positive payment adjustment factor that will be applied to the amounts otherwise paid to the MIPS eligible clinician under Medicare Part B for covered professional services during the applicable MIPS payment year (88 FR 74955).

In the interest of addressing this variability, we discussed in the Disincentives Proposed Rule that we had considered whether we could propose an alternative approach under which we would tailor the monetary impact of a disincentive imposed on a health care provider to the severity of the conduct in which the health care provider engaged (88 FR 74955). However, we stated that we did not believe it would be feasible to develop such an approach for the disincentives proposed for health care providers. We noted that, because disincentives must

be established using authorities under applicable Federal law, the statute under which a disincentive is being established would need to specifically authorize or provide sufficient discretion for an appropriate agency to be able to adjust the monetary impact of the disincentive to fit the gravity or severity of the information blocking the health care provider has been determined to have committed. We noted that, based on our review of potential authorities under which to establish disincentives, we believed many authorities do not provide discretion to adjust the monetary impact of a potential disincentive in this fashion. For instance, in the Disincentives Proposed Rule, CMS proposed to establish a disincentive through the Medicare Promoting Interoperability Program utilizing authority in SSA section 1886 (88 FR 74955). Under this authority, CMS, as specified in section 1886(b)(3)(B)(ix)(I) of the SSA, adjusts payments for eligible hospitals by a fixed proportion, based on whether or not an eligible hospital (as defined in section 1886(n)(6)(B) of the SSA) is a meaningful EHR user.

We did not make any proposals in this section of the Disincentives Proposed Rule; however, we summarize and respond below to general comments that we received on this discussion.

Comments. Some commenters expressed support for disincentives for health care providers who have been found to have committed information blocking. These commenters expressed that these disincentives will lead to better patient outcomes, improved information sharing, increased transparency, a reduction in systemic inefficiency and waste, and improved accountability and compliance. Some commenters agreed that the three programs described in the Disincentives Proposed Rule (that is, the Medicare Promoting Interoperability Program for eligible hospitals and CAHs, the Promoting Interoperability performance category of MIPS, and the Medicare Shared Savings Program) are appropriate programs under which to establish disincentives.

Response. We thank commenters for their support of the proposed disincentives.

Comments. One commenter expressed that the proposed disincentives impose substantial punishments on health care providers found to have engaged in information blocking and thereby exceed the regulatory authorities delegated to HHS agencies by Congress. The commenter stated that the term “disincentivize” means the act of creating a disincentive or withdrawing a

previously existing incentive. However, the commenter stated that the Disincentives Proposed Rule proposed penalties that would impose significant punishments on health care providers found to have engaged in information blocking. The commenter cited *West Virginia v. EPA*,²⁴ to suggest that the rule “may” have the type of significant impact that requires Congress explicitly to grant regulatory power to the agency.

Response. We disagree that the disincentives that CMS has finalized in section III.C. of this final rule exceed the regulatory authority Congress granted to the Secretary in the Cures Act. Section 4004 of the Cures Act amended the PHSA to create section 3022(b)(2)(B), which states that a health care provider “shall be referred to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking.” The commenter does not dispute that each of the disincentives CMS proposed and has finalized in this section (III.C.) use authorities under applicable Federal law, and we are adopting each disincentive through this notice-and-comment rulemaking. The agency is applying existing authorities to individuals and entities that are already subject to them, to disincentivize one set of prohibited behaviors. This is not one of the “extraordinary cases” in which the “history and the breadth of the authority that the agency has asserted, and the economic and political significance of that assertion” merits increased scrutiny.²⁵ Even if it did, the statute has specifically delegated responsibility for establishing appropriate disincentives to the Secretary of HHS, through notice and comment rulemaking, and so provides all express authorization that might be needed.

The commenter reads the term “disincentive” to exclude penalties or punishment. We agree that we should account for statute’s use of the term “disincentives.” We do so by adopting a definition of “disincentive” in 45 CFR 171.102 that includes conditions imposed by an appropriate agency on a health care provider that OIG determines has committed information blocking, for the purpose of deterring information blocking. A disincentive could be any condition that would have a deterrent effect on information blocking, as explained in section III.A.3. of this final rule. But we reject the commenter’s effort to draw a strict line between deterrence and punishment.

²⁴ 597 U.S. 697 (2022).

²⁵ *West Virginia v. EPA*, 597 U.S. 697, 721 (2022).

Those two concepts are often interrelated.²⁶

Finally, CMS has finalized disincentives that are designed to deter information blocking; they are not impermissibly punitive. As discussed in section III.C.2. of this final rule, a reduction of three quarters of the annual market basket update deters eligible hospitals from engaging in information blocking because it would reduce the inpatient prospective payment system (IPPS) payment that an eligible hospital could have earned had it met other requirements under the Medicare Promoting Interoperability Program. For CAHs, receiving 100 percent of reasonable costs instead of the 101 percent of reasonable costs that a CAH may have earned for successful participation in the Medicare Promoting Interoperability Program deters information blocking by CAHs because it reduces the reimbursement a CAH could have received had it met other requirements under the Medicare Promoting Interoperability Program. For MIPS eligible clinicians, the disincentive under the MIPS Promoting Interoperability performance category deters information blocking by other MIPS eligible clinicians because a MIPS eligible clinician who receives a score of zero in the MIPS Promoting Interoperability performance category under the disincentive cannot earn a positive MIPS payment adjustment factor that they otherwise could have earned for their performance in MIPS (88 FR 74960). Finally, the disincentive CMS has finalized under the Shared Savings Program deters information blocking by potentially withholding revenue which an ACO or participant in an ACO might otherwise have earned through participation in the Shared Savings Program.

Comments. Many commenters expressed concern that the proposed disincentives will have a differential impact, are variable and confusing, and are not equitable across programs, circumstances of individual health care providers, and years. A few commenters expressed concern that there would be a much greater burden for clinicians in the Shared Savings Program compared to clinicians who are only subject to disincentives under the MIPS Promoting Interoperability performance category, because the monetary disincentive would be much greater for Shared Savings Program clinicians and would potentially interrupt care coordination

and harm Medicare beneficiaries' care. Others stated that hospitals could be disproportionately impacted, citing concerns about the high variability of disincentive amounts that could be imposed on hospitals based on the market basket increase in a given year and the proportion of Medicare patients served. Commenters also noted that hospitals face unique financial and operational challenges, such as narrow operating margins and minimal reserves. Several commenters expressed concern that disincentives would lead to a larger burden and impact for health care providers with a larger proportion of Medicare claims, patients, and reimbursement. Several commenters expressed concern that disincentives would vary from year to year based on the value of the market basket adjustment and certain performance incentives in a given year. A few commenters specifically expressed concern that variation in disincentives between referral years could be based on how quickly OIG processes the case and refers it to CMS for action.

Response. We understand commenters' concerns about the potential for the disincentives CMS has finalized in this rule to vary based on factors related to the circumstances of the health care provider, such as the amount of Medicare reimbursement received. However, under PHSA section 3022(b)(2)(B), we must establish disincentives "using authorities under applicable Federal law." As discussed in section III.A.2. of this final rule, we may therefore only establish, through notice and comment rulemaking, a disincentive for health care providers using an authority Congress has previously granted to an appropriate agency. Where these authorities result in differential treatment of a health care provider based on the health care provider's circumstances or based on changes to the regulations promulgated under that authority over time, these elements will ultimately impact the value of the disincentive established under that authority. We acknowledged this variability, providing a specific example with respect to the MIPS Promoting Interoperability performance category, in the Disincentives Proposed Rule (88 FR 74955).

However, we disagree that this variability is a compelling reason to not establish a certain disincentive. Such variability already exists as part of these programs. For instance, the monetary impact on an eligible hospital that is not a meaningful EHR user because it fails to meet the objectives and measures associated with the Medicare Promoting Interoperability Program will be higher

for an eligible hospital that receives a greater volume of Medicare payment than an eligible hospital that receives a lower volume of Medicare payment. Under section 1886(b)(3)(B)(ix) of the SSA, if an eligible hospital does not demonstrate that it has met the requirements to be a meaningful EHR user under section 1886(n)(3)(A), CMS reduces the eligible hospital's payment by three quarters of the applicable percentage increase in the market basket update or rate-of-increase for hospitals. Under SSA 1886(b)(3)(B), the market basket update is a percentage applied to a hospital's base operating cost, meaning that the monetary value of the market basket update depends on the hospitals' base operating cost. This variability is integrated into the authority Congress established for the program, and Congress has required the Secretary to establish appropriate disincentives using authorities under Federal law.

We further disagree with the commenters that ensuring equitable treatment across programs is necessary to finalize the disincentives we are establishing in this final rule. The authorities under which we have finalized disincentives require health care providers to satisfy certain requirements in order to participate in a program that may provide incentives or other benefits. In the case of the MIPS Promoting Interoperability performance category and the Medicare Promoting Interoperability Program, eligible clinicians, and eligible hospitals and CAHs, have the opportunity earn positive Medicare payment adjustments as specified under each authority. Under the Shared Savings Program, ACOs, ACO providers/suppliers, and participants have the opportunity to earn additional revenue through participation in an ACO if the ACO meets the requirements to earn shared savings payments.

As discussed in section III.C., by committing information blocking, a health care provider is engaging in behavior that conflicts with core requirements of each of these programs. Health care providers that participate in CMS programs offering opportunities to receive positive payment adjustments or additional revenue take on increased responsibilities associated with these programs. To deter information blocking, we believe that where a health care provider commits information blocking, it should not receive these benefits, consistent with the increased responsibilities that these programs impose. Thus, as discussed by CMS under each part of this section (III.C.) in which it has finalized a disincentive,

²⁶ See *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 493 (2008), (noting one "aim" of "punishment" is "deterrence"); *Hudson v. United States*, 522 U.S. 93, 102 (1997), ("[A]ll civil penalties have some deterrent effect.").

each of these disincentives is warranted under the authorities that CMS has used to establish the disincentive.

Comments. Many commenters expressed concern that the proposed disincentives could be extreme or harsh for health care providers. A few commenters expressed concern that the burden of health care provider information blocking disincentives would be greater for smaller, safety net, and less resourced health care providers. One commenter expressed concern that the disincentives would create extra burden for health care providers or sites of service that lack experience with electronic health records.

Response. We appreciate commenters' concerns regarding the potential impact of the proposed disincentives, especially on smaller health care providers. However, we remind readers that, as noted in section III.A.3. of this final rule, we believe that disincentives should have the effect of deterring information blocking practices. We also remind readers that, in order for a practice by a health care provider to be considered information blocking under PHSA section 3022(a), the health care provider must know that "such practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information." Therefore, we believe that health care providers can avoid the burden of the finalized disincentives by not engaging in information blocking, including conduct that the health care provider knows is unreasonable. Finally, we note that certain authorities used by CMS to finalize disincentives in this final rule include policies which already reflect the size of the health care provider, such as payment adjustments which reflect the volume of payments received by a health care provider under Medicare.

Regarding the comment that disincentives will create additional burden for health care providers that lack experience with electronic health records, we understand that commenters are concerned that a health care provider could be determined to have committed information blocking due to a lack of knowledge or expertise about technology tools used to exchange of electronic health information. However, we wish to emphasize that for a practice committed by a health care provider to meet the definition of information blocking, the health care provider must know that such practice is unreasonable, as discussed above.

Comments. Many commenters expressed concern that the proposed disincentive structure does not provide

flexibility for HHS to apply disincentives that are reasonable, appropriate, and proportional for the specific instance of information blocking. Many commenters recommended that disincentives should be tailored to the severity or frequency of conduct, or the degree to which the conduct resulted in patient harm. Other commenters suggested tailoring disincentives based on other factors such as: whether the health care provider participates in an HIE; whether a health care provider made a good faith attempt to not engage in information blocking or comply with an exception; whether the health care provider made proactive efforts to promote access to information; state-specific circumstances affecting the health care provider; and whether the health care provider is engaged in complicated medical areas, such as reproductive and gender-affirming care. Commenters expressed that tailoring disincentives in this way would increase the proposed policy's effectiveness and reduce disproportionate impact. Some commenters recommended including a maximum disincentive amount to ensure health care providers are not unduly penalized. Commenters stated that although the Cures Act requires the disincentives to be made "using authorities under applicable Federal law," such language could permit different disincentive thresholds, scaling, or other ways to establish and appropriately calibrate financial penalties. A few commenters recommended that the alternative policy discussed in the Disincentives Proposed Rule for the Shared Savings Program, in which CMS would review other facts and circumstances of the case should be applied for all health care provider information blocking disincentives to allow for consideration of frequency, severity, and intent and to allow for remediation.

Response. We acknowledge commenters' recommendations to link the impact of disincentives to different factors, such as the severity or scale of the conduct. As discussed in the Disincentives Proposed Rule, we considered whether we could propose an alternative approach under which we would tailor the monetary impact of a disincentive imposed on a health care provider to the severity of the conduct in which the health care provider engaged (88 FR 74955). However, we stated that, because disincentives must be established using authorities under applicable Federal law, the statute under which a disincentive is being established would need to specifically

authorize or provide sufficient discretion for an appropriate agency to be able to adjust the monetary impact of the disincentive to fit the gravity or severity of the information blocking the health care provider has been determined to have committed. We further noted that, based on our review of potential authorities under which to establish disincentives, many authorities do not provide discretion to adjust the monetary impact of a potential disincentive in this fashion (88 FR 74955). For instance, as discussed in the Disincentives Proposed Rule, the authority we used in section 1886(b)(3)(B)(ix)(I) of the SSA to establish a disincentive under the Medicare Promoting Interoperability Program does not allow for such discretion (88 FR 74955).

In the case of the Shared Savings Program, CMS has finalized a policy based on an alternative proposal discussed in the Disincentives Proposed Rule. This policy will allow the Shared Savings Program to exercise discretion about whether or not to impose a disincentive based on certain factors, consistent with existing discretion exercised by the Shared Savings Program when addressing program integrity issues and issues specific to the effects of imposing a disincentive under the Shared Savings Program on other individuals and entities that may participate in an ACO. CMS states in section III.C.4. that these factors include the time since the information blocking conduct occurred and whether the ACO or provider/supplier has taken steps to mitigate this conduct. However, it is important to note that CMS has finalized this as a policy specific to the Shared Savings Program.

For disincentives established under the Medicare Promoting Interoperability Program and the MIPS Promoting Interoperability performance category, which have been established under different authorities in the SSA, CMS did not propose and has not finalized to take such factors into consideration before imposing a disincentive.

Comments. Many commenters recommended that steps such as initial notices or warnings of non-compliance, education, corrective action, and technical assistance be utilized before applying a disincentive for a health care provider found to have committed information blocking. Several commenters recommended that education and technical assistance should be provided before applying a disincentive for specific health care providers, including health care providers that disproportionately serve low-income, minority, underserved, or

immigrant populations; solo and small practitioners; and other less resourced health care providers. Some commenters recommended these steps should be used until health care providers gain experience with the information blocking requirements or for first time offenders. Commenters recommended these steps for a number of reasons, including: the information blocking requirements are new and complex and many health care providers do not yet fully understand the requirements; most information blocking is inadvertent and should not be subject to significant penalties as an initial step; such steps could avoid potential negative impacts on patient access and Medicare participation; and corrective steps before a disincentive would better promote information sharing and prevent future information blocking violations.

Many commenters expressed that such approaches would be consistent with other HHS and CMS programs and policies that allow for education and corrective steps. A few commenters expressed that the terminology used in PHSA section 3022(b)(2)(B), “appropriate disincentives,” allows HHS to establish disincentives other than financial disincentives. One commenter stated that the programs HHS is proposing to establish disincentives for already have the authority to provide health care providers with opportunities for corrective action, education, and learning periods before imposing disincentives.

Response. We appreciate the commenters’ recommendations to provide for corrective action plans, technical assistance, or other activities for health care providers that have been determined by OIG to have committed information blocking. We note that we did not propose, and have not finalized, that elements such as individualized or corrective action would be generally available to any health care provider that OIG has determined to have committed information blocking. Nor did we propose that activities such as corrective action plans or technical assistance would be generally available to certain types of health care providers, such as less-resourced providers or first-time offenders. Commenters did not identify a separate authority under which to establish the general availability of a corrective action plan process for any health care provider that has been determined by OIG to have committed information blocking. We note that in section III.C.4. of this final rule, CMS has finalized that, prior to imposing a disincentive under the

Shared Savings Program, it will take into consideration any evidence that indicated whether conduct that resulted in a determination of information blocking had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence.

Regarding commenters’ suggestions to provide education and technical assistance before applying a disincentive for health care providers that are smaller, less resourced, or care for specific populations, we note that any considerations with respect to how an appropriate disincentive should impact health care providers with certain attributes would be addressed by the appropriate agency establishing the disincentive. In section III.A.1, an appropriate agency, in establishing a disincentive, could retain or implement policies based on the type of health care provider subject to the disincentive, including small practices, consistent with the agency’s authority. For instance, in section III.A.3. of this final rule we discuss existing regulations under the MIPS Promoting Interoperability performance category which pertain to small practices.

Regarding commenters’ suggestion to not impose disincentives on “first-time offenders” and instead utilize a corrective action plan, we note that such a policy ignores both the intent standard for a finding of information blocking by a health care provider and how any disincentive may impact a provider’s behavior. To engage in information blocking, a health provider must know that the practice was unreasonable and that the practice was likely to interfere with, prevent, or materially discourage the access, exchange, or use of EHI. This intent standard supports establishing disincentives that would appropriately address and deter such culpable actions by health care providers. Further, creating a blanket policy that would give each health care provider a “free offense” could incentivize providers not to refrain from committing information blocking until they are caught. We do not believe that is the type of “disincentive” required by the statute.

Comments. A few commenters recommended considering whether a health care provider has self-disclosed a violation before applying a disincentive. Several commenters recommended offering a self-disclosure protocol (SDP).

Response. We appreciate the commenters’ recommendations. The Cures Act did not require, and we did not propose, to establish a self-disclosure protocol for health care providers who have committed information blocking. We note that OIG stated in the OIG CMP Final Rule that

it would make a self-disclosure protocol available to those actors seeking to resolve their information blocking CMP liability (88 FR 42824 and 42825). However, we do not believe a self-disclosure protocol would be feasible with respect to the finalized disincentives for health care providers. An appropriate agency’s ability to adjust a disincentive to reflect the severity of the underlying information blocking conduct is dependent on whether the authority under applicable Federal law used to establish the disincentives allows for such an adjustment, consistent with section 3022(b)(2)(B) of the PHSA. For instance, as discussed previously, we are unable to adjust the amount of the reduction in the market basket increase, which is the basis for the disincentive finalized under the Medicare Promoting Interoperability Program in section III.C.2. of this final rule. With respect to this finalized disincentive, a self-disclosure protocol would have limited utility as we would be unable to adjust a health care provider’s “liability”.

Comments. One commenter requested clarification of whether the proposed disincentive structure allows CMS to determine whether to apply a disincentive once it receives a referral from OIG, and if so, if CMS can determine to which program or programs a disincentive may apply (for example if a physician works in a hospital).

Response. Under PHSA section 3022(b)(2)(B), as discussed in section III.A.2. of this final rule, disincentives must be established using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking. As we have finalized in section III.A., a health care provider who has committed information blocking and is referred by OIG to an appropriate agency could be subject to each disincentive established by the appropriate agency that is applicable to the health care provider. CMS has finalized in the Shared Savings Program a policy in this final rule under which it will consider certain factors prior to taking action against an ACO, ACO participant, or ACO provider/supplier, consistent with existing processes in the Shared Savings Program. CMS did not propose and has not finalized a policy to consider additional factors prior to imposing the disincentives being finalized under the Medicare Promoting Interoperability Program and the MIPS Promoting Interoperability performance category.

Comments. Some commenters expressed concern about the unintended consequences of the proposed

disincentives. Commenters suggested that the proposed disincentives may discourage health care providers from participating in the Medicare programs, including quality and value-based programs. Additionally, commenters expressed that health care providers who receive a greater proportion of their payments from Medicare would be exposed to greater financial risk under the proposed disincentives and would therefore be disincentivized to treat Medicare beneficiaries. Commenters also stated that the financial impacts of the proposed disincentives could: cause hospitals and health systems to disinvest from health IT; reduce the ability to report existing interoperability measures; increase financial risk for already precarious health care providers; impact access to care; increase documentation burden for health care providers to demonstrate they are not information blocking; reduce physician morale; and increase burnout. A few commenters recommended that HHS design disincentives through collaboration with interested parties. Others recommended that if HHS implements the rule as proposed that it monitor for potential unintended consequences and impacts of the disincentives on deterring information blocking.

Response. We appreciate the commenters' concerns, but we disagree that establishing disincentives will discourage participation in these programs. Each of the programs for which CMS has finalized disincentives already requires health care providers to meet certain requirements, which they have been willing to meet in order to potentially earn the incentives or benefits associated with these programs. To avoid the disincentives finalized by CMS in this rule, health care providers do not need to complete any additional program requirements beyond refraining from conduct that meets the definition of information blocking in the information blocking regulations, which have been effective since April 5, 2021 (85 FR 70066). Due to the lack of significant administrative burden associated with disincentives, we do not believe finalizing these policies will lead to significant numbers of health care providers forgoing the opportunity to earn the incentives or benefits available from the programs under which we have finalized disincentives.

Comments. Several commenters recommended other authorities under which to propose disincentives, or programs that should serve as models for disincentives. These included: the Administrative Simplification provisions of HIPAA; CMS Conditions

of Coverage and Conditions of Participation; electronic prescribing of controlled substances (EPCS) disincentives for certain health care provider types; and CMS' Improper Payment Measurements Program's Payment Error Rate Measurement's (PERM). Commenters identified aspects of these programs that they asserted would be desirable as part of the implementation of disincentives, such as: education and corrective action plans to allow actors to resolve liability; non-punitive methods of resolution; a warning and grace period prior to penalties similar to warnings provided for price transparency requirements; and a tiered approach depending on the severity of the violation, which they stated would result in appropriate disincentives and a more just determination.

Response. We thank commenters for their recommendations and may consider them for future rulemaking.

We did not make any proposals and have not finalized any policies in this section.

2. Medicare Promoting Interoperability Program for Eligible Hospitals and Critical Access Hospitals (CAHs)

a. Background

In the Disincentives Proposed Rule, CMS stated that we intended to use existing Medicare Promoting Interoperability Program authority concerning the meaningful use of certified EHR technology (CEHRT) to impose disincentives on eligible hospitals and CAHs that OIG determines have committed information blocking (defined in 45 CFR 171.103) and for which OIG refers a determination to CMS (88 FR 74955). Under section 1886(n)(3)(A) of the SSA, an eligible hospital or CAH²⁷ is treated as a meaningful EHR user for the EHR reporting period for a payment year if it demonstrates to the satisfaction of the Secretary, among other requirements, that during the EHR reporting period: (1) the eligible hospital used CEHRT in a meaningful manner; and (2) the CEHRT is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information. In the Disincentives Proposed Rule, CMS stated that the requirements for an eligible hospital or CAH to be a meaningful EHR user would be substantially undermined and frustrated if the eligible hospital or CAH commits

information blocking, such that application of an appropriate disincentive is warranted (88 FR 74955).

Under section 1886(b)(3)(B)(ix) of the SSA, if an eligible hospital does not demonstrate that it has met the requirements to be a meaningful EHR user under section 1886(n)(3)(A), CMS will reduce the eligible hospital's payment by three quarters of the applicable percentage increase in the market basket update, or rate-of-increase for hospitals. Under section 1814(l)(4) of the SSA, if the Secretary determines that a CAH has not been a meaningful EHR user for a given EHR reporting period, CMS will pay that CAH 100 percent of its reasonable costs, instead of 101 percent of reasonable costs, which is the amount that the CAH would have received as a meaningful EHR user under the Medicare Promoting Interoperability Program.

As discussed in the Disincentives Proposed Rule, HHS has authority to apply disincentives to both eligible hospitals and CAHs (88 FR 74955). PHSA section 3022(b)(2)(B) authorizes HHS to apply disincentives to health care providers OIG determines have committed information blocking. As discussed in section II.B.1 of the Disincentives Proposed Rule, HHS has adopted, for purposes of the information blocking regulations in 45 CFR part 171, the definition of health care provider in section 3000(3) of the PHSA, which includes health care providers that are eligible for participation in the Medicare Promoting Interoperability Program (88 FR 74949 and 74950). The definition of "health care provider" in section 3000(3) of the PHSA includes "hospital" as a health care provider. Section 1886(n)(6)(B) of the SSA defines the term "eligible hospital" for the purposes of the Medicare Promoting Interoperability Program (75 FR 44316 and 44317) as "a hospital that is a subsection (d) hospital or a subsection (d) Puerto Rico hospital." Eligible hospitals are in one of the fifty States or the District of Columbia (75 FR 44448). Hospitals in Puerto Rico became eligible hospitals for the Medicare Promoting Interoperability Program with the passage of the Consolidated Appropriations Act of 2016 (Pub. L. 114–113, Dec. 18, 2015). A CAH is defined in section 1861(mm) of the SSA as "a facility that has been certified as a critical access hospital under section 1820(e)." "Hospital" is not further defined under the PHSA definition in section 3000(3). Therefore, CMS interprets the term "hospital" in section 3000(3) of the PHSA to include both eligible hospitals and CAHs that are

²⁷ Section 1814(l)(3) of the SSA applies to critical access hospitals the standard for determining a meaningful EHR user in section 1886(n)(3).

eligible to participate in the Medicare Promoting Interoperability Program.

b. The Medicare Promoting Interoperability Program as an Appropriate Disincentive for Information Blocking Under the PHSA

As discussed in the Disincentives Proposed Rule, the requirements under SSA section 1886(n)(3)(A) that an eligible hospital or CAH must meet to be a meaningful EHR user, particularly the first two requirements under SSA section 1886(n)(3)(A)(i) and (ii), would be substantially undermined and frustrated if the eligible hospital or CAH commits information blocking, such that application of an appropriate disincentive is warranted (88 FR 74956). To be considered a meaningful EHR user under section 1886(n)(3)(A) of the SSA, an eligible hospital or CAH must, in brief: (1) demonstrate to the satisfaction of the Secretary the use of CEHRT in a meaningful manner, (2) demonstrate to the satisfaction of the Secretary that their CEHRT is connected in a manner that provides for electronic exchange of health information to improve the quality of health care, and (3) use CEHRT to submit information concerning quality measures and other measures as specified. With respect to the electronic exchange of health information requirement in SSA section 1886(n)(3)(A)(ii), an eligible hospital or CAH must demonstrate to the satisfaction of the Secretary that its CEHRT is “connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination, and . . . demonstrates . . . that the hospital has not knowingly and willfully taken action (such as to disable functionality) to limit or restrict the compatibility or interoperability of the certified EHR technology.” Two examples of the CMS requirements for health information exchange include the requirement for eligible hospitals and CAHs to report on the Health Information Exchange Objective and the Provider to Patient Exchange Objective, both of which are part of the requirements for demonstrating the meaningful use of CEHRT, in accordance with SSA section 1886(n)(3).

As discussed in the Disincentives Proposed Rule, by establishing a disincentive for information blocking under the Medicare Promoting Interoperability Program, CMS is using an authority under applicable Federal law as required in section 3022(b)(2)(B) of the PHSA (88 FR 74956). Eligible

hospitals and CAHs that OIG determines to have committed information blocking, and for which OIG refers its determination to CMS, would be subject to a disincentive under applicable law, as they are participating in the Medicare Promoting Interoperability Program authorized by that applicable law. In addition, the Medicare Promoting Interoperability Program requires eligible hospitals and CAHs to engage in practices that encourage the access, exchange, and use of electronic health information to avoid a downward payment adjustment. The requirements an eligible hospital or CAH must meet to be treated as a meaningful EHR user in section 1886(n)(3)(A)(i) and (ii) of the SSA specify that an eligible hospital or CAH must demonstrate that it meets these requirements “to the satisfaction of the Secretary.” As discussed in the Disincentives Proposed Rule, CMS believes these provisions authorize the Secretary to interpret these requirements through rulemaking as necessary to ensure that an eligible hospital or CAH satisfies the requirements to be a meaningful EHR user as defined by the Secretary (88 FR 74956). Specifically, CMS believes it is appropriate for the Secretary to interpret these requirements through rulemaking to determine that an eligible hospital or CAH that has committed information blocking, and for which OIG refers its determination of information blocking to CMS, has not met the definition of a meaningful EHR user. This proposal is consistent with the goals of the Medicare Promoting Interoperability Program, which include the advancement of CEHRT utilization, focusing on interoperability and data sharing (81 FR 79837); information blocking by eligible hospitals and CAHs would frustrate both these goals (88 FR 74956).

In the Disincentives Proposed Rule, CMS also stated that it believes the proposed disincentive under the Medicare Promoting Interoperability Program would be an appropriate disincentive that would deter information blocking by eligible hospitals and CAHs, consistent with the discussion in section III.A.3. of the Disincentives Proposed Rule (88 FR 74956). While the exact monetary impact of the disincentive would vary based on the specific eligible hospital, CMS believes a reduction of three quarters of the annual market basket update would deter eligible hospitals from engaging in information blocking because it would reduce the inpatient prospective payment system (IPPS) payment that an eligible hospital could

have earned had it met other requirements under the Medicare Promoting Interoperability Program. Similarly, though the exact dollar amount would vary based on the specific CAH, CMS believes that receiving 100 percent of reasonable costs instead of the 101 percent of reasonable costs that a CAH may have earned for successful participation in the Medicare Promoting Interoperability Program would deter information blocking by CAHs because it would reduce the reimbursement a CAH could have received had it met other requirements under the Medicare Promoting Interoperability Program (88 FR 74956).

In the Disincentives Proposed Rule, HHS analyzed the range of potential disincentive amounts an eligible hospital could be subject to if the proposed disincentive was imposed, to illustrate the degree to which this disincentive could deter eligible hospitals from engaging in information blocking. For more information about this analysis, we refer readers to the Disincentive Proposed Rule (88 FR 74956 and 74957).

c. Provisions

In the Disincentives Proposed Rule, CMS proposed to revise the definition of “Meaningful EHR User” in 42 CFR 495.4 to state that an eligible hospital or CAH is not a meaningful EHR user in a calendar year if OIG refers a determination that the eligible hospital or CAH committed information blocking, as defined at 45 CFR 171.103, during the calendar year of the EHR reporting period (88 FR 74957). As a result of the proposal, CMS would apply a downward payment adjustment under the Medicare Promoting Interoperability Program to any such eligible hospital or CAH because the eligible hospital or CAH would not be a meaningful EHR user, as required under SSA sections 1886(b)(3)(B)(ix) and 1814(l)(4). For eligible hospitals, CMS would apply the downward adjustment to the payment adjustment year that occurs 2 years after the calendar year when the OIG referral occurs. For CAHs, CMS would apply the downward adjustment to the payment adjustment year that is the same as the calendar year when the OIG referral occurs.

In the Disincentives Proposed Rule, CMS noted that as a result of these proposals, an eligible hospital or CAH that otherwise fulfilled the required objectives and measures to demonstrate that it is a meaningful EHR user for an EHR reporting period would nevertheless not be a meaningful EHR user for that EHR reporting period if

OIG refers a determination of information blocking to CMS during the calendar year in which the EHR reporting period falls (88 FR 74957). CMS considered applying this proposed disincentive based on the date that the eligible hospital or CAH committed the information blocking as determined by OIG, instead of the date OIG refers its determination to CMS. However, a significant amount of time could pass between the date when the eligible hospital or CAH is determined to have committed information blocking, and the date when OIG makes a referral to CMS, due to the time required for OIG to fully investigate a claim of information blocking. Such delay between the date the information blocking occurred, and OIG's referral could complicate the application of the disincentive and would likely necessitate reprocessing of a significant number of claims. Therefore, CMS proposed to use the date of the OIG referral instead of the date of the information blocking occurrence to apply the proposed disincentive. Accordingly, CMS would apply the proposed disincentive to the payment adjustment year associated with the calendar year in which the OIG referred its determination to CMS (88 FR 74957).

CMS further noted in the Disincentives Proposed Rule that if an eligible hospital or CAH received the applicable downward payment adjustment because CMS had already determined the eligible hospital or CAH had otherwise not been a meaningful EHR user during the applicable EHR reporting period due to its performance in the Medicare Promoting Interoperability Program, imposition of the proposed disincentive would result in no additional impact on the eligible hospital or CAH during that payment adjustment year (88 FR 74957). Finally, even if multiple information blocking violations were identified as part of OIG's determination (including over multiple years) and referred to CMS, each referral of an information blocking determination by OIG would only affect an eligible hospital's or CAH's status as a meaningful EHR user in a single EHR reporting period during the calendar year when the determination of information blocking was referred to CMS by OIG. Unless OIG makes an additional referral of an information blocking determination in the subsequent calendar year, an eligible hospital or CAH would again be able to qualify as a meaningful EHR user starting in the subsequent EHR reporting period (88 FR 74957).

CMS invited public comment on these proposals, particularly on its approach

to the application of a disincentive for OIG determinations that found that information blocking occurred in multiple years and whether there should be multiple disincentives for such instances (for example, disincentives in multiple calendar years/reporting periods compared to only the calendar year/reporting period in which OIG made the referral). The following is a summary of the comments we received and our responses.

Comments. One commenter supported our proposal to apply disincentives to eligible hospitals and CAHs, referred by OIG to CMS, for information blocking. The commenter stated that the approach would not involve additional services or requirements for patients, and that this structure incentivizes the use of health IT and exchange of electronic health information.

Response. We thank this commenter for their support and agree that using an existing program and its existing structure to establish a disincentive, without including additional requirements for eligible hospitals and CAHs, does incentivize the meaningful use of CEHRT. We also agree that this approach continues to promote the interoperable exchange of health information for patients, eligible hospitals, and CAHs.

Comments. One commenter supported the underlying goal of encouraging information exchange but strongly opposed the proposed disincentive. They stated that these disincentives could damage essential eligible hospitals and CAHs and undermine HHS goals by decreasing resources available to otherwise make appropriate investments in their IT infrastructure. Several commenters opposed the disincentive stating that it is excessive, potentially harmful to already fragile eligible hospitals and CAHs, and has the potential to eliminate annual payment updates for offenders. Several commenters stated that this disincentive is unsustainable financially.

Response. We thank commenters for sharing this feedback and expressing their concerns. We disagree that this disincentive is unsustainable, excessive, and potentially harmful. This disincentive utilizes the existing payment adjustments that are currently applied under the Medicare Promoting Interoperability Program (previously the Medicare EHR Incentive Program) and were authorized as part of the American Recovery and Reinvestment Act of 2009, and we have chosen to use that authority for these payment adjustments to establish a disincentive for

information blocking determinations by OIG. As described, we consider eligible hospitals and CAHs that commit information blocking as not demonstrating the meaningful use of CEHRT. We are aligning the disincentive we are finalizing with the existing process for those who do not meet the minimum requirements for demonstrating the meaningful use of CEHRT.

In addition, there are eligible hospitals and CAHs that receive the same payment adjustment as would apply under this disincentive due to their failure to participate, or through unsuccessfully demonstrating meaningful use by not meeting the minimum program requirements in the EHR reporting period for a payment adjustment year. These hospitals would not experience an additional impact if OIG refers a determination that they committed information blocking, if such eligible hospitals or CAHs also fail to participate or unsuccessfully demonstrate meaningful use by not meeting the minimum program requirements in a given EHR reporting period. Foundationally, being considered a meaningful user of CEHRT in the Medicare Promoting Interoperability Program reflects that an eligible hospital or CAH is meaningfully using health IT and sharing health information. If an eligible hospital or CAH is not meaningfully using CEHRT, including by engaging in information blocking conduct, they would be subject to the same payment adjustment as would an eligible hospital or CAH that fails to meet our other program requirements.

Comments. Many commenters supported our proposed disincentive policy but have asked for an extension in various forms. Some commenters asked that disincentives start 2 years after the effective date of this final rule, to give eligible hospitals and CAHs two additional years of support and education to understand what is considered information blocking, and to ensure adequate training for their staff. Several commenters asked for an undefined grace period to educate staff and utilize support services from OIG, ONC, and CMS, to fully understand these policies before the disincentives are implemented. A few commenters suggested that we delay the disincentives policy, and instead start with a non-enforcement period before punitive penalties begin. Lastly, some commenters asked that we delay the disincentives policy, and instead start with a corrective action plan, followed by punitive penalties in the future.

Response. We thank commenters for their feedback. We appreciate the suggestions asking for additional support and education and may consider this feedback. However, we do not agree that the disincentive policy should be delayed for a minimum of 2 years after the release of this final rule. As discussed above, the payment adjustment structure for not meeting the definition of being a meaningful user of CEHRT under the Medicare Promoting Interoperability Program is not new or unique to information blocking. Eligible hospitals and CAHs are already subject to payment adjustments under the Medicare Promoting Interoperability Program if they fail to meet the requirements of being a meaningful user of CEHRT based on not meeting minimum program requirements (sections 1886(b)(3)(B) and 1814(l) of the Act). We have finalized our proposal to update the definition of meaningful EHR user in 42 CFR 495.4 to exclude from that definition eligible hospitals and CAHs that OIG refers to CMS based on a determination of information blocking. Therefore, the only additional requirement for eligible hospitals and CAHs is that OIG did not refer a determination that the eligible hospital or CAH committed information blocking as defined at 45 CFR 171.103 during the calendar year of the EHR reporting period. We further note that the information blocking regulations in the ONC Cures Act Final Rule went into effect April 5, 2021 (85 FR 70068), and several years will have already passed between the date when these regulations went into effect for health care providers and the effective date of this final rule.

We refer readers to section III.B.1. of this final rule which states that OIG will not begin investigating health care providers until after the effective date of this rule, and that OIG will exercise its enforcement discretion not to make any determinations regarding conduct occurring prior to the effective date of this rule for information blocking disincentives. As OIG will not make a determination on conduct occurring prior to the effective date, OIG will not refer any health care providers based on a determination of conduct occurring prior to the effective date of this rule for information blocking disincentives (see also, 88 FR 42823 and 42824). This means that no disincentives finalized in this final rule will be applied to conduct occurring before the effective date of this final rule, which is 30 days after the final rule appears in the **Federal Register**.

We appreciate the recommendations regarding offering educational

opportunities that would be helpful to health care providers and will consider these recommendations.

Comments. Many commenters asked that CMS reconsider the disincentives policy to reflect a tiered approach, proportional to severity and frequency, suggesting that as proposed, a singular disincentive conflates egregious claims with minor claims, and one-time offenders with repeat offenders. Several commenters suggested that CMS consider applying a disincentive only to egregious claims rather than all claims.

Response. We thank commenters for this feedback. As discussed previously, the definition of meaningful EHR user is central to the Medicare Promoting Interoperability Program and this policy. While we acknowledge there may be varying levels of severity, frequency, and potential patient harm encompassed in different OIG determinations of information blocking, we will receive all determinations of information blocking that are referred to CMS by OIG. As we have finalized our proposal to revise the definition of “Meaningful EHR User,” the disincentive associated with not being a meaningful EHR user would be applying the existing downward adjustment under the Medicare Promoting Interoperability Program. This downward adjustment was established in the American Recovery and Reinvestment Act of 2009, and CMS does not have the flexibility to adjust the level of the downward adjustment utilizing a tiered approach. For instance, as discussed in the Disincentives Proposed Rule (88 FR 74955), under section 1886(b)(3)(B)(ix)(I) of the SSA, CMS adjusts payments for eligible hospitals by a fixed proportion, based on whether an eligible hospital (as defined in section 1886(n)(6)(B) of the SSA) is a meaningful EHR user.

We note that while our proposed policy states that each referral of an information blocking determination by OIG would only affect an eligible hospital’s or CAH’s status as a meaningful EHR user in a single EHR reporting period during the calendar year when the determination of information blocking was referred by OIG, it is possible that repeated subsequent determinations could be referred by OIG in future years. We will address all determinations referred by OIG applicable to eligible hospitals and CAHs within the existing payment adjustment under the Medicare Promoting Interoperability Program, as finalized in this final rule.

As for commenters’ concerns that a single disincentive conflates egregious claims with minor claims, we remind

readers that prior to the application of the disincentive OIG will investigate an allegation and determine if information blocking has occurred. As discussed in III.B.1. of this final rule, OIG’s enforcement priorities inform decisions about which information blocking allegations to pursue, but they are not dispositive. Indeed, OIG will assess each allegation to determine whether it implicates one or more of the enforcement priorities, or otherwise merits further investigation and potential enforcement action, and OIG may evaluate allegations and prioritize investigations based in part on the volume of claims relating to the same (or similar) practices by the same entity or individual. Additionally, we take this opportunity to remind readers that CMS’s application of a disincentive will be based on the referral of OIG’s determination that information blocking has occurred. Information blocking includes an element of intent, which for health care providers is that the health care provider knows that a practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of EHI.

Comments. A few commenters raised concerns regarding the timing between OIG receiving a referral, the claim being referred to CMS, and the timing of the disincentive. Commenters asked that disincentives be the same for all cases of information blocking, rather than based on hospital size, annual market basket updates, or reasonable costs. Under the proposal, if a large eligible hospital and a CAH are each referred to OIG with a claim of information blocking, the penalties vary based on EHR reporting period, size, and hospital type.

Response. We thank commenters for sharing this feedback. We understand that some commenters believe that the disincentive should be based on the date that the information blocking occurred, but doing so would be administratively difficult, and therefore impractical, to implement because it would likely involve reprocessing past claims. Since we expect the time it takes OIG to fully investigate an information blocking claim and refer a determination to CMS will vary, we decided not to use the date that OIG determines information blocking conduct occurred to determine the application of the payment adjustment. Instead, CMS will use the date of the OIG referral to CMS and specify that the eligible hospital or CAH is not a meaningful user of CEHRT for the EHR reporting period in that calendar year. The payment adjustment will apply to the payment adjustment year 2 years

later. We agree that with the existing payment adjustment under the Medicare Promoting Interoperability Program, there is variation in the annual market basket updates for eligible hospitals and in reasonable costs for CAHs. As a result of that variability, there would be variability in the amount of any disincentives imposed under the Medicare Promoting Interoperability Program as a result of an OIG referral of a determination of information blocking. While CMS did consider alternative approaches (88 FR 74957), we have finalized our proposal to revise the definition of meaningful EHR user in 42 CFR 495.4, and therefore the requirements to be considered a meaningful EHR user. While we are mindful there is variation in the monetary impact of payment adjustments under the Medicare Promoting Interoperability Program based on size, hospital type, and timing of receiving the referral of an OIG determination of information blocking, we respectfully disagree with commenters that the monetary impact of the disincentive should be the same for all eligible hospitals or CAHs, as this could disproportionately impact hospitals with lower Medicare claims volumes.

After consideration of the public comments, CMS has finalized our proposal to revise the definition of “Meaningful EHR User” in 42 CFR 495.4 to state that an eligible hospital or CAH is not a meaningful EHR user in a calendar year if OIG refers a determination that the eligible hospital or CAH committed information blocking, as defined at 45 CFR 171.103, during the calendar year of the EHR reporting period.

For eligible hospitals, CMS will apply a downward payment adjustment to the payment year that occurs 2 years after the calendar year when an OIG referral occurs. This is a reduction of three quarters of the annual market basket update that an eligible hospital could have earned.

For CAHs, CMS will apply a downward payment adjustment to the payment year that is the same as the calendar year when the OIG referral occurs. This reduction results in a payment of 100 percent of reasonable costs instead of the 101 percent of reasonable costs that a CAH could have earned.

Lastly, CMS has finalized our proposal that if multiple information blocking violations are identified as part of OIG’s determination (including over multiple years) and referred to CMS, each referral of an information blocking determination by OIG will only affect an

eligible hospital’s or CAH’s status as a meaningful EHR user in a single EHR reporting period during the calendar year when the determination of information blocking was referred to CMS by OIG.

d. Notification and Application of the Disincentive

In the Disincentives Proposed Rule, CMS stated that after OIG has determined that a health care provider has committed information blocking and referred that health care provider to CMS, CMS would notify the eligible hospital or CAH that OIG determined that the eligible hospital or CAH committed information blocking as defined under 45 CFR 171.103, and thus the eligible hospital or CAH was not a meaningful EHR user for the EHR reporting period in the calendar year when OIG referred its information blocking determination to CMS. This notice would be issued in accordance with the notice requirements proposed at 45 CFR 171.1002, as discussed in section III.B.2. of the proposed rule.

As a result of our proposal to modify the definition of meaningful EHR user in 42 CFR 495.4, the application of the disincentive would result in a downward payment adjustment for eligible hospitals 2 years after the OIG referral of a determination of information blocking to CMS. Based upon the existing regulation at 42 CFR 495.4, the downward payment adjustment would apply 2 years after the year of the referral and the EHR reporting period in which the eligible hospital was not a meaningful EHR user. For CAHs, the downward payment adjustment would apply to the payment adjustment year in which the OIG referral was made.

CMS invited public comment on these proposals. The following is a summary of the comments we received and our responses.

Comments. Commenters asked for ample notification from CMS that a determination has been referred from OIG to CMS regarding information blocking.

Response. We thank commenters for their support on this proposal and agree that ample notification and communication is necessary.

After consideration of the public comments, CMS has finalized our proposal that we will notify an eligible hospital or CAH that OIG has determined that the eligible hospital or CAH committed information blocking as defined under 45 CFR 171.103, and, as a result, that the eligible hospital or CAH was not a meaningful EHR user for EHR reporting period in the calendar

year when OIG referred its information blocking determination to CMS.

3. Promoting Interoperability Performance Category of the Medicare Merit-Based Incentive Payment System (MIPS)

a. Background

MIPS requires that MIPS eligible clinicians use CEHRT, as defined at SSA section 1848(o)(4) and 42 CFR 414.1305,²⁸ in a meaningful manner, in accordance with SSA sections 1848(q)(2)(A)(iv) and (B)(iv) and 1848(o)(2) and 42 CFR 414.1375, to earn a score for the MIPS Promoting Interoperability performance category. In the Disincentives Proposed Rule, CMS stated that we intend to use this existing authority, requiring the meaningful use of CEHRT, to impose disincentives on MIPS eligible clinicians that OIG determines to have committed information blocking as defined at 45 CFR 171.103 (88 FR 74957 and 74958).

(1) MIPS Overview—Scoring and Payment Calculations

As authorized by the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10, April 16, 2015), the Quality Payment Program is a value-based payment program,²⁹ by which the Medicare program rewards MIPS eligible clinicians who provide high-value, high-quality services in a cost-efficient manner. The Quality Payment Program includes two participation tracks for clinicians providing services under the Medicare program: MIPS and Advanced Alternative Payment Models (APMs). The statutory requirements for MIPS are set forth in SSA sections 1848(q) and (r).

For the MIPS participation track, MIPS eligible clinicians are subject to a MIPS payment adjustment (positive, negative, or neutral) based on their performance in four performance categories (cost, quality, improvement activities, and Promoting Interoperability) compared to the

²⁸ For MIPS, SSA section 1848(o)(4) defines CEHRT as a qualified electronic health record (as defined in PHS section 3000(13)) that is certified by ONC pursuant to PHS section 3001(c)(5) as meeting standards adopted under PHS section 3004 that are applicable to the type of record involved, as determined by the Secretary. CMS has codified the definition of CEHRT, including additional criteria it must be certified as meeting, that MIPS eligible clinicians must use at 42 CFR 414.1305.

²⁹ In the Disincentives Proposed Rule, we referred to the Quality Payment Program as a payment incentive program (88 FR 74958). Within the Quality Payment Program, MIPS is more appropriately described as a value-based payment system, and we have revised this statement for clarity and precision.

established performance threshold for that performance period/MIPS payment year. CMS assesses each MIPS eligible clinician's total performance according to established performance standards with respect to the applicable measures and activities specified in each of these four performance categories during a performance period to compute a final composite performance score (a "final score" as defined at 42 CFR 414.1305) in accordance with our policies set forth in 42 CFR 414.1380.

In calculating the final score, CMS must apply different weights for the four performance categories, subject to certain exceptions, as set forth in SSA section 1848(q)(5) and at 42 CFR 414.1380. Unless CMS assigns a different scoring weight pursuant to these exceptions, for the CY 2024 performance period/2026 MIPS payment year and subsequent performance periods/MIPS payment years,³⁰ the scoring weights are as follows: 30 percent for the quality performance category; 30 percent for the cost performance category; 15 percent for the improvement activities performance category; and 25 percent for the Promoting Interoperability performance category (SSA section 1848(q)(5)(E); 42 CFR 414.1380(c)(1)).

To calculate the payment adjustment factor that will be applied to the amounts otherwise paid to MIPS eligible clinicians under Medicare Part B for covered professional services during the applicable MIPS payment year, CMS then compares the final score to the performance threshold CMS has established for that performance period/MIPS payment year at 42 CFR 414.1405(b). The MIPS payment adjustment factors specified for a year must result in differential payments such that MIPS eligible clinicians with final scores above the performance threshold receive a positive MIPS payment adjustment factor, those with final scores at the performance threshold receive a neutral MIPS payment adjustment factor, and those with final scores below the performance threshold receive a negative MIPS payment adjustment factor. As further

specified in SSA section 1848(q)(6)(F) and 42 CFR 414.1405, CMS also applies a scaling factor to determine the MIPS payment adjustment factor for each MIPS eligible clinician, and CMS must ensure that the estimated aggregate increases and decreases in payments to all MIPS eligible clinicians as a result of MIPS payment adjustment factors are budget neutral for that MIPS payment year. As provided in SSA sections 1848(q)(6)(A) and (B)(iv) and 42 CFR 414.1405(c), the positive MIPS payment adjustment factor may be up to 9 percent for a final score of 100 and the negative MIPS payment adjustment factor may be up to negative 9 percent for a final score of zero.

(2) MIPS Promoting Interoperability Performance Category

For MIPS eligible clinicians, SSA section 1848(q)(2)(A)(iv) includes the meaningful use of CEHRT as one of the four performance categories by which a MIPS eligible clinician is assessed to determine a MIPS payment adjustment factor, as discussed previously. CMS refers to this performance category as the Promoting Interoperability performance category. SSA section 1848(q)(2)(B)(iv) provides that the requirements set forth in SSA section 1848(o)(2) for determining whether a MIPS eligible clinician is a meaningful user of CEHRT also apply to CMS's assessment of MIPS eligible clinicians' performance on measures and activities with respect to the MIPS Promoting Interoperability performance category. Also, SSA section 1848(o)(2)(D) generally provides that the requirements for being a meaningful EHR user under section 1848(o)(2) continue to apply for purposes of MIPS.

A MIPS eligible clinician that is not a meaningful user of CEHRT in accordance with SSA section 1848(o)(2)(A) cannot satisfy the requirements of the MIPS Promoting Interoperability performance category and, therefore, would earn a score of zero for this performance category. Applying the weights for the performance categories under 42 CFR 414.1380(c)(1), a score of zero for the Promoting Interoperability performance category would mean that the maximum final score a MIPS eligible clinician could achieve, if they performed perfectly in the remaining performance categories, would be 75 points.

To be a meaningful EHR user under SSA section 1848(o)(2)(A) (and therefore meet the requirements of the MIPS Promoting Interoperability performance category under SSA section 1848(q)(2)(B)(iv)), a MIPS eligible clinician must meet three requirements

related to the meaningful use of CEHRT during a performance period for a MIPS payment year. In brief, the MIPS eligible clinician must: (1) demonstrate to the satisfaction of the Secretary the use of CEHRT in a meaningful manner; (2) demonstrate to the satisfaction of the Secretary that their CEHRT is connected in a manner that provides for electronic exchange of health information to improve the quality of care; and (3) use CEHRT to submit information concerning quality measures and other measures as specified.

More specifically, for the first requirement under SSA section 1848(o)(2)(A)(i), a MIPS eligible clinician must demonstrate, to the satisfaction of the Secretary, that during the relevant performance period, the MIPS eligible clinician is "using certified EHR technology in a meaningful manner." For the second requirement under SSA section 1848(o)(2)(A)(ii), a MIPS eligible clinician must demonstrate, to the satisfaction of the Secretary, that during the relevant period CEHRT is "connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health³¹ care, such as promoting care coordination" and the MIPS eligible clinician demonstrates, through "a process specified by the Secretary, such as the use of an attestation" that the MIPS eligible clinician "has not knowingly and willfully taken action (such as to disable functionality) to limit or restrict the compatibility or interoperability of the certified EHR technology." For the third requirement under SSA section 1848(o)(2)(A)(iii), a MIPS eligible clinician currently must submit information via their CEHRT on "such clinical quality measures and such other measures as selected by the Secretary" in "a form and manner specified by the Secretary," including measures focused on providing patients with electronic access to their electronic health information, sending electronic health information to other health care providers, and receiving and incorporating electronic health information from other health care providers.

As discussed further in section III.C.3.b. of the Disincentives Proposed Rule (88 FR 74959 and 74960) and this final rule, these three requirements for a MIPS eligible clinician to be

³⁰ In the Disincentives Proposed Rule, we only noted that these scoring weights apply to the CY 2024 performance period/2026 MIPS payment year (88 FR 74958). However, as set forth in SSA section 1848(q)(5)(E), these scoring weights applied beginning 6 years after MIPS began applying to Medicare Part B payments (CY 2017 performance period/2019 MIPS payment year) and continue to apply for each subsequent year thereafter. Accordingly, we amended this description in this final rule for clarity and accuracy to note that these scoring weights continue to apply, provided CMS does not assign a different scoring weight pursuant to applicable exceptions.

³¹ In the Disincentives Proposed Rule (88 FR 74958), this word was inadvertently omitted from the quote of the statutory provision.

determined to be a meaningful user of CEHRT, particularly the first two requirements under SSA section 1848(o)(2)(A)(i) and (ii), would be substantially undermined and frustrated if the MIPS eligible clinician commits information blocking, such that application of an appropriate disincentive is warranted.

b. The MIPS Promoting Interoperability Performance Category Requirements as an Appropriate Disincentive for Information Blocking Under the PHSA

In the Disincentives Proposed Rule, CMS stated it believes that the requirements set forth in SSA sections 1848(q)(2)(B)(iv) and 1848(o)(2)(A) for the MIPS Promoting Interoperability performance category are an applicable Federal law for the purposes of establishing a disincentive for a health care provider that participates in MIPS and has been determined by OIG to have committed information blocking (88 FR 74959). First, the definitions of MIPS eligible clinician and health care provider under 45 CFR 171.102 and the PHSA generally are aligned. Second, committing information blocking not only violates the law and principles set forth in the Cures Act, but also undermines the goals and purpose of the MIPS Promoting Interoperability performance category. On such basis, CMS proposed an appropriate disincentive for MIPS eligible clinicians that OIG determines have committed information blocking and for whom OIG refers its determination of information blocking to CMS, as discussed further in section III.C.3.c. of the Disincentives Proposed Rule (88 FR 74959 through 74962).

(1) Alignment of Definitions of MIPS Eligible Clinician and Health Care Provider Under the PHSA

In the Disincentives Proposed Rule, CMS noted that it believes that the definitions of MIPS eligible clinician under the SSA and 42 CFR 414.1305 and health care provider under PHSA section 3000(3) and 45 CFR 171.102 generally are aligned (88 FR 74959). CMS believes this alignment will permit application of appropriate disincentives, as required by PHSA section 3022(b)(2)(B), to MIPS eligible clinicians, except for qualified audiologists. CMS proposed to codify this exception in the definition of Meaningful EHR User for MIPS at 42 CFR 414.1305 (88 FR 74959).

Beginning with the 2024 MIPS payment year, a MIPS eligible clinician is defined in 42 CFR 414.1305 as including: (1) a physician (as defined in SSA section 1861(r)); (2) a physician

assistant, nurse practitioner, and clinical nurse specialist (as defined in SSA 1861(aa)(5)); (3) a certified registered nurse anesthetist (defined in SSA section 1861(bb)(2)); (4) a physical therapist or occupational therapist; (5) a qualified speech-language pathologist; (6) a qualified audiologist (as defined in SSA section 1861(ll)(4)(B)); (7) a clinical psychologist (as defined by the Secretary for purposes of SSA section 1861(ii)); (8) a registered dietitian or nutrition professional; (9) a clinical social worker (as defined in SSA section 1861(hh)(1)); (10) a certified nurse midwife (as defined in SSA section 1861(gg)(2)); and (11) a group, identified by a unique single taxpayer identification number (TIN), with two or more eligible clinicians, one of which must be a MIPS eligible clinician, identified by their individual national provider identifier (NPI) and who have reassigned their billing rights to the single group TIN. However, for a given performance period/MIPS payment year, a MIPS eligible clinician does not include an eligible clinician who meets one of the exclusions set forth in 42 CFR 414.1310(b), including being a Qualifying APM participant, Partial Qualifying APM Participant that does not elect to participate in MIPS, or does not exceed the low volume threshold (as these terms are defined in 42 CFR 414.1305).

Meanwhile, the definition of “health care provider” under PHSA section 3000(3) as implemented in 45 CFR 171.102, includes the following which are also considered MIPS eligible clinicians: (1) a “group practice” (which is not defined in the PHSA); (2) a physician (as defined in SSA section 1861(r)); (3) practitioners, as defined in SSA section 1842(b)(18)(C) to include: (a) a physician assistant, nurse practitioner, and clinical nurse specialist (as defined in SSA 1861(aa)(5)); (b) a certified registered nurse anesthetist (defined in SSA section 1861(bb)(2)); (c) a certified nurse-midwife (as defined in SSA section 1861(gg)(2)); (d) a clinical social worker (as defined in SSA section 1861(hh)(1)); (e) a clinical psychologist (as defined by the Secretary for purposes of SSA section 1861(ii)); and (f) a registered dietitian or nutrition professional; (4) therapists, as defined in SSA section 1848(k)(3)(B)(iii) to include: (a) a physical therapist; (b) an occupational therapist; and (c) a qualified speech-language pathologist; and (5) “any other category of health care facility, entity, practitioner, or clinician determined appropriate by the Secretary” (88 FR 74959).

At this time, only a qualified audiologist, included in the definition of MIPS eligible clinician in 42 CFR 414.1305 since the CY 2019 performance period/2021 MIPS payment year, is not identified as a health care provider under 45 CFR 171.102 and PHSA section 3000(3). Because qualified audiologists are not included in the PHSA definition of health care provider, CMS proposed that MIPS eligible clinicians who are qualified audiologists would not be subject to the disincentive proposed for the MIPS Promoting Interoperability performance category (88 FR 74959).

As discussed previously, groups, and multispecialty groups (as defined in 42 CFR 414.1305) also are included in the definition of MIPS eligible clinician and therefore are subject to payment adjustments under MIPS based on the performance of MIPS eligible clinicians that are included in these groups, under different sets of regulations in 42 CFR part 414, subpart O. Meanwhile, as discussed previously, the definition of health care provider in PHSA section 3000(3) includes “group practice,” but does not define what this term means. Accordingly, in the Disincentives Proposed Rule, CMS stated that it also believes that a group may be subject to the disincentive proposed for the MIPS Promoting Interoperability performance category if the group has been determined by OIG to have committed information blocking, or if MIPS eligible clinicians included in the group have committed information blocking (88 FR 74959).

(2) Information Blocking Conduct Undermines the Goals and Purpose of the MIPS Promoting Interoperability Performance Category

As discussed in the Disincentives Proposed Rule, health care providers that engage in information blocking undermine and frustrate the purpose for requiring MIPS eligible clinicians to use CEHRT in a meaningful manner (88 FR 74960). Specifically, requiring MIPS eligible clinicians to use CEHRT is not limited to MIPS eligible clinicians adopting and implementing CEHRT for documenting clinical care in lieu of paper-based medical records. For use of CEHRT to be meaningful, SSA section 1848(o)(2)(A) requires that MIPS eligible clinicians use CEHRT to communicate with other treating health care providers, pharmacies, and oversight authorities regarding the patient’s health information, including the MIPS eligible clinician’s review and treatment of the patient’s health. SSA sections 1848(o)(2)(A)(i) and (ii) require that MIPS eligible clinicians demonstrate

that they are meaningfully using CEHRT's key functionalities, such as electronically prescribing, and ensuring that CEHRT is "connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care," such as "promoting care coordination." SSA section 1848(o)(2)(A)(ii) further requires that the MIPS eligible clinician demonstrate that they have not "knowingly and willfully taken action (such as to disable functionality) to limit or restrict the compatibility or interoperability" of CEHRT, which is similar to the directive to investigate and discourage information blocking under PHSA section 3022. In the Disincentives Proposed Rule, CMS noted that establishing an appropriate disincentive for information blocking under the MIPS Promoting Interoperability performance category would not only deter information blocking but would strengthen an existing merit-based incentive payment system that already encourages health care providers to support the access, exchange, and use of electronic health information (88 FR 74960).

Furthermore, the requirements to be treated as a meaningful EHR user in SSA sections 1848(o)(2)(A)(i) and (ii) specify that a MIPS eligible clinician must demonstrate that they meet these requirements to the satisfaction of the Secretary. In the Disincentives Proposed Rule, CMS stated it believes these provisions authorize the Secretary to interpret these requirements through rulemaking as necessary to ensure that a MIPS eligible clinician satisfies the requirements to be a meaningful user of CEHRT as defined by the Secretary (88 FR 74960). Specifically, CMS noted that it believes it is appropriate for the Secretary to interpret these requirements through rulemaking to determine that a MIPS eligible clinician that has committed information blocking is not a meaningful EHR user (88 FR 74960). In the Disincentives Proposed Rule (88 FR 74960), CMS noted that the proposal was consistent with the goals of the MIPS Promoting Interoperability performance category, which include promoting health care efficiency and encouraging widespread health information exchange (81 FR 77200 through 77202). CMS stated that information blocking by MIPS eligible clinicians frustrates both these goals (88 FR 74960).

As noted in the Disincentives Proposed Rule, CMS believes a disincentive for information blocking

associated with the MIPS Promoting Interoperability performance category would be an appropriate disincentive that would deter information blocking by other MIPS eligible clinicians, consistent with the discussion in section III.A.3. of the Disincentives Proposed Rule (88 FR 74960). While the exact monetary impact of the disincentive may vary for each MIPS eligible clinician based on the various factors CMS considers when determining the MIPS payment adjustment factor, CMS believes the proposed disincentive would deter information blocking by other MIPS eligible clinicians. In the Disincentives Proposed Rule, CMS noted that a MIPS eligible clinician who receives a score of zero in the MIPS Promoting Interoperability performance category under the proposed disincentive may not be able to earn a positive or neutral MIPS payment adjustment factor that they otherwise could have earned for their performance in MIPS (88 FR 74960).

In the Disincentives Proposed Rule, to illustrate the degree to which this disincentive could deter information blocking, HHS analyzed the range of potential disincentive amounts MIPS eligible clinicians could be subject to if the proposed disincentive was imposed, using payment and MIPS data from 2021, the most recent year of publicly available data. For more information about this analysis, we refer readers to the Disincentives Proposed Rule (88 FR 74960).

c. Provisions

Under the authority in SSA sections 1848(o)(2)(A) and (D), and 1848(q)(2)(A)(iv) and (B)(iv), for the MIPS Promoting Interoperability performance category, CMS proposed that a MIPS eligible clinician would not be a meaningful EHR user in a performance period if OIG refers a determination that the MIPS eligible clinician committed information blocking (as defined at 45 CFR 171.103) at any time during the calendar year of the performance period (88 FR 74960 and 74961).³² CMS also proposed that

³² As provided in 42 CFR 414.1320(h), for purposes of the 2024 MIPS payment year and each subsequent MIPS payment year, the performance period for the MIPS Promoting Interoperability performance category is a minimum of a continuous 90-day period within the calendar year that occurs 2 years prior to the applicable MIPS payment year, up to and including the full calendar year. In 42 CFR 414.1305, CMS has defined the "MIPS payment year" as the calendar year in which the MIPS payment adjustment factor is applied to Medicare Part B payments. In the CY 2024 Physician Fee Schedule proposed rule, CMS proposed that, beginning with the 2026 MIPS

the determination by OIG that the MIPS eligible clinician committed information blocking would result in a MIPS eligible clinician that is required to report on the MIPS Promoting Interoperability performance category not earning a score in the performance category (a zero score), which is typically a quarter of the total final score. CMS proposed to codify this proposal under the definition of meaningful EHR user for MIPS at 42 CFR 414.1305 and amend the requirements for earning a score for the MIPS Promoting Interoperability performance category at 42 CFR 414.1375(b) (88 FR 74960 and 74961).

CMS considered applying the proposed disincentive based on the date that the MIPS eligible clinician committed the information blocking as determined by OIG, instead of the date OIG refers its determination to CMS (88 FR 74961). However, a significant period could pass between the date when the MIPS eligible clinician is determined to have committed information blocking, and the date when OIG makes a referral to CMS, due to the time required for OIG to fully investigate a claim of information blocking. Such delay between the date the information blocking allegedly occurred and OIG's referral could complicate our application of the disincentive and would likely necessitate reprocessing of a significant number of claims. Therefore, CMS decided to use the date of the OIG referral instead of the date of the information blocking occurrence to apply this proposed disincentive. Accordingly, CMS proposed to apply the proposed disincentive to the MIPS payment year associated with the calendar year in which OIG referred its determination to CMS (88 FR 74961). As provided in 42 CFR 414.1320, the applicable MIPS payment year is 2 calendar years after the performance period. The time period between the performance period and the MIPS payment year permits CMS to review each MIPS eligible clinician's performance to determine their final score and MIPS payment adjustment factor. We noted that, under the

payment year, the performance period for the MIPS Promoting Interoperability performance category would be a minimum of a continuous 180-day period within the calendar year that occurs 2 years prior to the applicable MIPS payment year, up to and including the full calendar year (88 FR 52578 through 52579). Since the Disincentives Proposed Rule appeared in the **Federal Register**, CMS finalized this proposal for amending the performance period for the MIPS Promoting Interoperability performance category, to a minimum of a continuous 180-day period, in the CY 2024 Physician Fee Schedule final rule and codified this amendment as proposed at 42 CFR 414.1320(i) (88 FR 79351 through 79353).

proposal, if OIG referred its determination that a MIPS eligible clinician committed information blocking in calendar year 2025, then CMS would apply the disincentive proposed herein for the 2027 MIPS payment year (88 FR 74961).

In the Disincentives Proposed Rule, first, CMS proposed to amend the definition of “meaningful EHR user for MIPS” at 42 CFR 414.1305 (88 FR 74961). The current definition states that a “meaningful EHR user for MIPS means a MIPS eligible clinician who possesses CEHRT, uses the functionality of CEHRT, reports on applicable objectives and measures specified for the Promoting Interoperability performance category for a performance period in the form and manner specified by CMS, does not knowingly and willfully take action (such as to disable functionality) to limit or restrict the compatibility or interoperability of CEHRT, and engages in activities related to supporting providers with the performance of CEHRT.” CMS proposed to add to this definition that a MIPS eligible clinician is not a meaningful EHR user in a performance period if OIG refers a determination that the clinician committed information blocking (as defined at 45 CFR 171.103) during the calendar year of the performance period (88 FR 74961). CMS also proposed other minor technical changes to the language of the definition. In the Disincentives Proposed Rule, CMS noted that, in tandem with other proposals for MIPS in this section, the proposed amendment to the definition in 42 CFR 414.1305 would result in a MIPS eligible clinician not being able to earn points associated with the Promoting Interoperability performance category they may otherwise have earned, potentially resulting in a negative or neutral payment adjustment. As such, we stated that this potential outcome likely would deter health care providers from engaging in information blocking (88 FR 74961).

Second, CMS proposed to amend the requirements for earning a score for the MIPS Promoting Interoperability performance category by adding a new requirement at 42 CFR 414.1375(b) (88 FR 74961). Currently, 42 CFR 414.1375(b) provides that, to earn a score (other than zero) for the Promoting Interoperability performance category, the MIPS eligible clinician must meet certain requirements, including using CEHRT, reporting on the objectives and associated measures as specified by CMS, and attesting to certain statements and activities. CMS proposed to amend 42 CFR 414.1375(b) by adding that the MIPS eligible clinician must be a

meaningful EHR user for MIPS as defined at 42 CFR 414.1305. In conjunction with the proposal to amend the definition of a meaningful EHR user for MIPS at 42 CFR 414.1305 discussed previously, CMS noted the proposal would establish a clear basis to apply a score of zero for the MIPS Promoting Interoperability performance category to a MIPS eligible clinician that fails to meet the definition of meaningful EHR user for MIPS during a performance period, specifically if OIG refers a determination of information blocking during the calendar year of the performance period (88 FR 74961).

In the Disincentives Proposed Rule, CMS noted that, under these proposals, a MIPS eligible clinician that OIG determines has committed information blocking would not be a meaningful EHR user, and therefore would be unable to earn a score (instead, earning a score of zero) for the MIPS Promoting Interoperability performance category (88 FR 74961). Because a MIPS eligible clinician that has committed information blocking would not be a meaningful EHR user for a given performance period, they would earn a zero for the Promoting Interoperability performance category for the calendar year of the applicable performance period in which the determination of information blocking was referred by OIG. For example, if OIG refers a determination that a MIPS eligible clinician committed information blocking to CMS in CY 2026, CMS would apply a score of zero for the Promoting Interoperability performance category for the 2028 MIPS payment year to the MIPS eligible clinician.

In the Disincentives Proposed Rule, CMS explained that under this proposed disincentive for information blocking, a score of zero for the MIPS Promoting Interoperability performance category would negatively impact 25 percent of the MIPS eligible clinician’s final score such that it would likely result in a negative MIPS payment adjustment for the applicable MIPS payment year (88 FR 74961). For example, applying the weights for the performance categories under 42 CFR 414.1380(c)(1), a score of zero for the Promoting Interoperability performance category would mean that the maximum final score a MIPS eligible clinician could achieve, if they performed perfectly in the remaining performance categories, would be 75 points.

Then, as discussed previously, to determine the MIPS payment adjustment factor, CMS compares the MIPS eligible clinician’s final score to the established performance threshold for that MIPS payment year. In 42 CFR

414.1405(b)(9)(ii), CMS established that the performance threshold for the 2025 MIPS payment year is 75 points. If, under this example, a MIPS eligible clinician still achieved 75 points for their final score for the 2025 MIPS payment year matching the established performance threshold of 75 points, then they would receive a neutral MIPS payment adjustment factor.

In the CY 2024 Physician Fee Schedule proposed rule, CMS proposed that the performance threshold for the 2026 MIPS payment year would be 82 points (88 FR 52596 through 52601). This proposal was not finalized in the CY 2024 Physician Fee Schedule Final Rule; instead, CMS finalized the performance threshold for the 2026 MIPS payment year as 75 points at 42 CFR 414.1405(b)(9)(iii) (88 FR 79374 through 79376). However, if some other performance threshold higher than 75 points is finalized in a future MIPS payment year, then a MIPS eligible clinician (that OIG determined committed information blocking and received a score of zero in the Promoting Interoperability performance category and therefore, under our example, a final score of 75 points) would receive a negative MIPS payment adjustment factor. If CMS finalizes a performance threshold higher than 75 points in a future MIPS payment year, then the proposed disincentive would likely to result in a MIPS eligible clinician that commits information blocking, as determined by OIG, receiving a negative payment adjustment, up to negative nine percent for a final score of zero as set forth in 42 CFR 414.1405(b)(2) and (c).

In the Disincentives Proposed Rule, CMS explained that, under these proposals, a MIPS eligible clinician, that otherwise fulfilled other requirements to demonstrate meaningful use of CEHRT for a performance period to earn a score for the Promoting Interoperability performance category, would nevertheless not be a meaningful EHR user for that performance period if OIG refers a determination of information blocking during the calendar year of the performance period (88 FR 74962). This would result in the MIPS eligible clinician nevertheless earning a score of zero for the Promoting Interoperability performance category.³³ Furthermore, if a MIPS eligible clinician earned a score of zero for the Promoting Interoperability performance category for a given year because CMS had

³³ Although this statement was not part of this explanation in the Disincentives Proposed Rule (88 FR 74962), we have added it for clarity. We believe this statement is logically inferred from the original proposal.

already determined the MIPS eligible clinician had otherwise not been a meaningful EHR user in that performance period due to its performance in the Promoting Interoperability performance category, imposition of the proposed disincentive would result in no additional impact on the MIPS eligible clinician during that MIPS payment year (88 FR 74962).

CMS clarified in the Disincentives Proposed Rule that, even if multiple information blocking violations were identified as part of OIG's determination (including over multiple years) and referred to CMS, each referral of an information blocking determination by OIG would only affect a MIPS eligible clinician's status as a meaningful EHR user in a single performance period during the calendar year when the determination of information blocking was referred by OIG (88 FR 74962). Barring an additional referral of an information blocking determination by OIG in the subsequent calendar year, a MIPS eligible clinician could be deemed a meaningful EHR user and earn a score for the Promoting Interoperability performance category in the following calendar year.

CMS invited public comment on these proposals. CMS particularly requested comment on its approach to the application of a disincentive for OIG determinations that found that information blocking occurred in multiple years and whether there should be multiple disincentives for such instances (for example, disincentives in multiple calendar years/performance periods compared to only one disincentive in the calendar year in which a referral from OIG is made).

The following is a summary of the comments received and our responses.

Comments. A few commenters supported the proposed application of disincentives in MIPS generally. One commenter noted that the disincentives will incentivize health IT use. Another commenter expressed that the Promoting Interoperability performance category is an appropriate avenue through which to apply the disincentives. A few commenters expressed general support for CMS' goals and purposes in applying disincentives to the MIPS Promoting Interoperability performance category, noting that the proposal is consistent with the Cures Act and that information blocking undermines the meaningful use of certified EHR technology.

Response. We appreciate the support of these commenters. We believe that information blocking disrupts the meaningful use of CEHRT and exchange

of electronic health information, as required by SSA section 1848(o)(2)(A)(i) and (ii), and should be deterred. We believe the disincentive will serve as a deterrent to information blocking practices and reduce the incidence of information blocking.

Comments. One commenter supported the proposal that health care providers determined by OIG to have engaged in information blocking should not be considered a meaningful EHR user within MIPS.

Response. We appreciate the support of this commenter. We agree that information blocking is not consistent with the goals of the MIPS Promoting Interoperability performance category to support meaningful use of CEHRT and exchange of electronic health information, as required by SSA section 1848(o)(2)(A)(i) and (ii).

Comments. A few commenters requested clarification on whether the reductions to the MIPS incentive payment will be deemed Recovered Penalty Funds pursuant to the Cures Act.

Response. We note that "reductions to the MIPS incentive payment" does not accurately reflect how MIPS may affect MIPS eligible clinician's payments for covered professional services under Medicare Part B. We refer readers to our description of MIPS, including how CMS assesses a MIPS eligible clinician's performance and calculates and applies MIPS payment adjustment factors in section III.C.3.a. of the Disincentives Proposed Rule (88 FR 74957 through 74959) and this final rule.

We reiterate that CMS proposed that OIG's referral of its determination that the MIPS eligible clinician committed information blocking would result in CMS specifying that the MIPS eligible clinician is not a meaningful EHR user and assigning the MIPS eligible clinician a score of zero for the Promoting Interoperability performance category. As we described in the Disincentive Proposed Rule, this may result in CMS calculating a MIPS payment adjustment factor that is neutral or negative (88 FR 74961 and 74962). When applied, a MIPS payment adjustment factor potentially adjusts Medicare Part B payments upwards or downwards and are not considered recovered penalty funds pursuant to Section 4004 of the Cures Act.

Comments. Commenters sought clarity on whether, if an eligible hospital or CAH was found to have committed information blocking for which CMS imposed a disincentive under the Medicare Promoting Interoperability Program, a MIPS eligible clinician that practices in, or is

affiliated with that eligible hospital or CAH (for example, an outpatient clinic) would also receive a disincentive under MIPS. Additionally, commenters sought clarity on whether a MIPS-eligible clinician that commits information blocking in a hospital setting would be assigned disincentives under both MIPS and the Medicare Promoting Interoperability Program based on the same finding.

Response. If OIG refers a determination of information blocking for a health care provider, CMS will apply disincentives established through notice and comment rulemaking that are applicable to that health care provider. Accordingly, if OIG found that an eligible hospital or CAH committed information blocking and referred the determination to CMS, we would only impose the disincentive under the Medicare Promoting Interoperability Program, which is applicable to eligible hospitals and CAHs, to the hospital that has committed information blocking. We would not impose a separate disincentive on individual MIPS eligible clinicians that are affiliated with the hospital, provided that OIG did not similarly find that the individual MIPS eligible clinician(s) also committed information blocking and referred that determination to CMS.

Comments. Several commenters expressed concern about the impact the proposed MIPS disincentive will have on patient access to care. A few commenters expressed that MIPS eligible clinicians may take on fewer Medicare beneficiaries as patients as a result of the potential impact of disincentives, while others may choose not to participate in the Medicare program at all, which may ultimately impact beneficiary access to care. One commenter contended that, because psychiatrists may be impacted, Medicare beneficiaries seeking mental health services could be negatively impacted by the proposed disincentives.

Response. While we understand these concerns, MIPS eligible clinicians already are required to demonstrate they are not knowingly or willfully taking actions to limit or restrict the compatibility or interoperability of the CEHRT they use as set forth in SSA section 1848(o)(2)(A)(ii). One of the current requirements of the MIPS Promoting Interoperability performance category is to attest "yes" to the self-reported attestation statement that they did not knowingly or willfully take action to limit or restrict compatibility or interoperability of CEHRT, which may include actions that are information blocking (42 CFR 414.1375(b)(3)(iii)).

In addition, we believe that the practice of information blocking could cause potential harm to patients. Information blocking does not promote healthcare efficiency and does not encourage widespread health information exchange. We refer readers to our discussion of how information blocking conduct undermines the goals and purpose of the MIPS Promoting Interoperability performance category in section III.C.3.b.(2). of the Disincentives Proposed Rule (88 FR 74960) and this final rule.

Comments. Several commenters expressed concern about the impact the proposed MIPS disincentive may have to increase burden and financial distress on health care providers. One commenter did not support the proposed impact of disincentive estimates for MIPS, noting that the penalties are economically significant and may be catastrophic for some practices. One commenter stated that this increasing burden is due to the changing nature of the underlying programs, requiring health care providers to continually monitor changes.

Response. Finalizing the proposed disincentive provisions related to MIPS eligible clinicians should not increase burden on clinicians as it does not require the clinician to do anything additional. The proposed disincentive only applies if the MIPS eligible clinician engages in information blocking contrary to statute, including SSA section 1848(o)(2)(A). As for financial distress, MIPS eligible clinicians can avoid receipt of a disincentive for information blocking by not interfering with, preventing, or materially discouraging the access, exchange, or use of electronic health information.

Comments. Several commenters shared recommendations on how CMS should apply disincentives in MIPS. A few commenters recommended that CMS establish more than one disincentive for MIPS eligible clinicians who are referred by OIG to allow the agency flexibility in determining the disincentive appropriate for each case. One commenter recommended that CMS provide clinicians who are successfully sharing information additional points for their MIPS score.

Response. We thank commenters for their feedback. While we initially considered different approaches, we proposed to amend the definition of meaningful EHR user. We proposed that a MIPS eligible clinician who is referred to CMS by OIG for information blocking would not be considered a meaningful EHR user, thereby resulting in earning a

zero for the Promoting Interoperability performance category.

While we acknowledge information blocking conduct may vary in levels of severity, frequency, and potential patient harm, we believe our proposed disincentive for MIPS is most closely aligned with the directive at PHSA section 3022(b)(2)(B) (to apply an appropriate disincentive using authorities under applicable Federal law) and the statutory criteria for being treated as a meaningful EHR user in SSA section 1848(o)(2)(A) for the MIPS Promoting Interoperability performance category under SSA section 1848(q)(2)(B)(iv), as discussed previously. Information blocking inhibits the meaningful use of CEHRT and the electronic exchange of health information as required by SSA section 1848(o)(2)(A). Failure to meet all three criteria to be treated as a meaningful EHR user at SSA section 1848(o)(2)(A) means the MIPS eligible clinician has failed to meet the requirements for the MIPS Promoting Interoperability performance category, which we believe warrants a score of zero. We believe this disincentive is most consistent with these statutory requirements for a MIPS eligible clinician to demonstrate they are a meaningful user of CEHRT because, as discussed previously, information blocking undermines the goals and purposes of these requirements.

Comments. A few commenters supported the proposal to use the date of the OIG referral instead of the date of the information blocking occurrence to apply the disincentive within MIPS, stating that this approach would avoid reprocessing of claims, allow health care providers to plan for a disincentive, and prevent additional administrative burden in the process.

Response. We agree that using the date of the referral is the preferred approach as it allows us to apply the disincentive to the applicable MIPS payment year.

Comments. One commenter recommended that CMS apply the disincentive to the performance period following the year in which OIG makes a determination on information blocking. A commenter expressed concern that the two-year period between when the referral occurs and when the disincentive is applied is too long and may not serve to correct health care provider behavior as a result. Another commenter recommended CMS not apply the disincentive in two MIPS payment years unless the information blocking conduct spanned more than 1 year, and that CMS apply the

disincentives according to the length of time over which the conduct occurred.

Response. We considered applying the disincentive to the year following the OIG referral but determined that it was not administratively feasible under CMS's existing MIPS policies and processes. We proposed that the disincentive be applied to the MIPS payment year 2 years after the year of the OIG referral. This aligns with current MIPS policy and processes, as the MIPS payment adjustment is applied to the MIPS payment year 2 years after the performance period.

We did not propose to apply the disincentive to multiple years. Even if a referral from OIG identified information blocking conduct that occurred over multiple years, we would only apply a payment adjustment to the year the OIG referral was made.

Comments. One commenter did not support the proposed amendments to the definition of a "meaningful EHR user for MIPS," noting that the proposed policy does not consider the severity of the information blocking determination and is inconsistent with OIG's existing policies of considering multiple factors prior to determining the severity of a penalty for HIEs/HINs.

Response. We thank the commenter for their feedback; however, we disagree. We believe that any instance of information blocking should not occur. OIG completes their investigation and then refers the determination to CMS. OIG does not impose the disincentive. We recognize that PHSA section 3022(b)(2)(A) states that, for health IT developers of certified health IT and HINs/HIEs who have committed information blocking that are subject to CMPs, the amount of the CMP shall consider factors such as the nature and extent of the information blocking. However, as discussed previously in this rule, this provision does not apply to health care providers that OIG refers to an appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as stated in PHSA section 3022(b)(2)(B). The proposal we have finalized in this final rule is established under the authority for the MIPS Promoting Interoperability performance category in SSA section 1848(q). This authority is discussed previously in detail and in the Disincentives Proposed Rule (88 FR 74958 and 74959). As we discuss in a previous response to a comment, this authority does not provide us with the ability to adjust payments under MIPS according to a set of factors related to the severity of information blocking practices.

Comments. Many commenters did not support the proposal to assign a zero score for the MIPS Promoting Interoperability performance category if a health care provider has committed information blocking. Many commenters expressed that the proposed disincentive is too severe, with some expressing concern that it would prevent eligible clinicians from earning a positive payment adjustment under MIPS and would likely result in a negative payment adjustment, especially if the performance threshold is increased in future years. Based on this, one commenter disagreed that the rule is not economically significant.

Response. We thank commenters for their feedback. We believe that committing information blocking is not only inconsistent with PHSA section 3022 but also undermines the goals and purpose of the MIPS Promoting Interoperability performance category. We refer readers to our discussion in section III.C.3.b.(2). of the Disincentives Proposed Rule (88 FR 74960) and this final rule.

As we discuss in a previous response to a comment, information blocking inhibits the meaningful use of CEHRT and the electronic exchange of health information as required by SSA section 1848(o)(2)(A). Failure to meet all three criteria to be treated as a meaningful EHR user at SSA section 1848(o)(2)(A) means the MIPS eligible clinician has also failed to meet the requirements for the MIPS Promoting Interoperability performance category, which warrants a score of zero. This disincentive is consistent with the statutory requirements for a MIPS eligible clinician to demonstrate they are a meaningful user of CEHRT because, as discussed previously, information blocking undermines the goals and purposes of these requirements.

We disagree that the disincentive is severe. It is closely aligned with the directive at PHSA section 3022(b)(2)(B) (to apply an appropriate disincentive using authorities under applicable Federal law) and the statutory requirements for MIPS. As discussed in section III.C.3.a.(1). of the Disincentives Proposed Rule (88 FR 74957 and 74958) and this final rule, a MIPS eligible clinician receiving a final score of zero for all applicable performance categories would result in a negative MIPS adjustment factor of negative 9 percent (sections 1848(q)(6)(A) and (B)(iv); 42 CFR 414.1405(c)). The MIPS statute at SSA sections 1848(q)(6)(A) and (B) establishes the framework by which CMS calculates MIPS payment adjustment factors based on CMS' assessment of MIPS eligible clinicians'

performance in the four performance categories. Nothing in the MIPS disincentive we proposed and have finalized in this rule alters that framework. Instead, this disincentive explicitly relies on that framework, providing that an OIG referral of its determination that a MIPS eligible clinician committed information blocking means the MIPS eligible clinician does not meet the requirements for the Promoting Interoperability performance category, and therefore warrants receiving a zero score for that category.

Further, we note that, after application of the linear scaling factor and budget neutrality, a final score above zero, but below the applicable performance threshold, may result in calculation of a MIPS payment adjustment factor between negative 9 percent and zero percent.³⁴ Depending on how the MIPS eligible clinician performs in the other performance categories and the weight assigned to the applicable performance categories for the final score, the potential effect of application of this disincentive (a zero score for the Promoting Interoperability performance category) on calculation of the MIPS payment adjustment factor may be limited.

As we state in section VI. of this final rule, the Office of Management and Budget has determined that the proposed rule is not a significant regulatory action as the potential costs associated with the proposed rule would not be greater than \$200 million per year nor would this action meet the other conditions necessary to be deemed significant.

Comments. Some expressed concern that disincentives may have a significant negative financial impact on practices. A few commenters contended that the proposed disincentive was too severe for first time offenders. Other commenters expressed concern about the impact this proposal would have on smaller practices, with some expressing concern that it may cause disproportionate financial distress to smaller practices.

Response. We appreciate the feedback, but health care providers,

including MIPS eligible clinicians, should not engage in information blocking practices. The impact associated with the disincentive meets our goal of deterring information blocking, which includes "first-time" conduct by health care providers. We also reiterate that information blocking practices by health care providers include an element of intent, in which the health care provider must know that a practice is unreasonable and likely to interfere with the exchange, access or use of electronic health information. We remind readers that we did not propose to modify our reweighting policies and small practices will continue to be automatically reweighted for the Promoting Interoperability performance category as provided in 42 CFR 414.1380(c)(2)(i)(C)(9).

Comments. One commenter expressed concern that, upon receipt of notice from CMS regarding OIG's finding that the MIPS eligible clinician committed information blocking and application of the disincentive, individual MIPS eligible clinicians or groups will have less incentive to report additional measures under the MIPS Promoting Interoperability performance category. They recommended deducting 10 points from the category score in a calendar year of the performance period if the OIG refers a determination of information blocking. Several commenters recommended that CMS instead implement a scalable system that would impose different disincentives depending on the severity or mitigating factors of the information blocking violation. A few commenters recommended a percentage or point deduction rather than failing the entire Promoting Interoperability performance category and scaling it to severity.

Response. We thank commenters for their input. While we did initially consider some of these alternatives, we ultimately decided not to propose them. As we discuss in a previous response to a comment, the disincentive we proposed and have finalized closely aligns with the directive at PHSA section 3022(b)(2)(B) (to apply an appropriate disincentive using authorities under applicable Federal law) and the statutory requirements MIPS. Information blocking inhibits the meaningful use of CEHRT and the electronic exchange of health information as required by SSA section 1848(o)(2)(A). Failure to meet all three criteria to be treated as a meaningful EHR user at SSA section 1848(o)(2)(A) means the MIPS eligible clinician has also failed to meet the requirements for the MIPS Promoting Interoperability performance category, which warrants a

³⁴ We refer readers to Table 60 in the CY 2024 Physician Fee Schedule final rule (88 FR 79379) for an illustration of the potential range of MIPS payment adjustment factors that may be calculated and applied based on comparison of a MIPS eligible clinician's final score to the applicable performance threshold. For instance, a final score of 0 to 18.75 points for the CY 2024 performance period/2026 MIPS payment year may result in negative 9 percent MIPS payment adjustment factor; a final score of 18.76 to 74.99 may result in a MIPS payment adjustment factor between negative 9 percent and zero percent.

score of zero. We believe any other disincentive option would be contrary to these statutory requirements for a MIPS eligible clinician to demonstrate they are a meaningful user of CEHRT because, as discussed previously, information blocking undermines the goals and purposes of these requirements.

The policies that we proposed and have finalized, including modification to the definition of meaningful EHR user for MIPS (42 CFR 414.1305), will result in a MIPS eligible clinician not being able to earn points associated with the Promoting Interoperability performance category if they were found to have committed information blocking. Regarding the recommendation to tie the disincentive to a reduction of 10 points in the performance category, and the recommendation to tie a point reduction to the severity of the information blocking conduct referred by OIG, we note that we did not propose these alternatives for the reasons stated above.

Comments. One commenter recommended CMS consider additional incentives within the Promoting Interoperability performance category to promote the flow of electronic health information and to deter information blocking.

Response. We appreciate this input and may consider it in future rulemaking. In recent years, we have added measures to the Promoting Interoperability performance category such as the Enabling Exchange under the Trusted Exchange Framework and Common Agreement (TEFCA) measure, to encourage the bi-directional exchange of patient information (87 FR 70067).

Comments. Another commenter requested CMS clarify how cases in which MIPS eligible clinicians transition from reporting traditional MIPS to MIPS Value Pathways (MVPs) during the OIG investigation would be addressed and whether penalties would be imposed given the different participation options within the MVP framework, expressing concern about confusion and implementation challenges.

Response. The MIPS Promoting Interoperability performance category is a foundational component of every MVP. As such, if a finding of information blocking is referred to CMS by OIG, we would apply the disincentive to the MIPS eligible clinician participating in an MVP.

After consideration of the public comments, CMS has finalized our proposal to revise the definition of “meaningful EHR user” for MIPS at 42 CFR 414.1305 to state that a MIPS

eligible clinician is not a meaningful EHR user in a performance period if OIG refers a determination that the clinician committed information blocking, as defined at 45 CFR 171.103, during the calendar year of the performance period. CMS has also finalized minor technical modifications to this definition as proposed (88 FR 74961). Consistent with our discussion in section III.C.3.b.(1), CMS has finalized this definition to also exclude a qualified audiologist from application of this disincentive. We originally noted this exclusion in the regulation text we proposed in the Disincentive Proposed Rule (88 FR 74968). Therefore, CMS has finalized the amendment to the regulatory definition of meaningful EHR user for MIPS at 42 CFR 414.1305 generally as proposed, with a modification to address group reporting as discussed in section III.C.3.c.(1) of this rule.

CMS has finalized our proposal that if OIG refers a determination to CMS that the MIPS eligible clinician is found to have committed information blocking, the MIPS eligible clinician will not earn a score in the Promoting Interoperability performance category (a zero score), which is typically a quarter of the total MIPS score. Further, CMS has finalized the proposal that we will apply the disincentive to the MIPS payment year associated with the calendar year in which OIG referred its determination to CMS. To codify this policy, CMS also has finalized its proposal to amend the requirements for earning a score for the MIPS Promoting Interoperability performance category at 42 CFR 414.1375(b) as proposed.

Lastly, CMS has finalized its proposal that, if multiple information blocking violations are identified as part of OIG’s determination (including over multiple years) and referred to CMS, each referral of an information blocking determination by OIG would only affect a MIPS eligible clinician’s status as a meaningful EHR user in a single performance period during the calendar year when the determination of information blocking was referred to CMS by OIG.

The final policies in this rule will become effective 30 days after the final rule appears in the **Federal Register**. As noted in section III.B.1. of this final rule, OIG will not begin investigating health care providers until after the effective date of this rule, and will exercise its enforcement discretion not to make any determinations regarding conduct occurring prior to the effective date of this rule for information blocking disincentives. As OIG will not make a determination on conduct occurring

prior to the effective date, OIG will not refer any health care providers based on a determination of conduct occurring prior to the effective date of this rule for information blocking disincentives. This means that CMS will not impose the disincentive finalized under the MIPS Promoting Interoperability performance category on information blocking conduct occurring before the effective date of this final rule.

(1) Groups and Virtual Groups

In the Disincentives Proposed Rule, CMS proposed that, if data for the MIPS Promoting Interoperability performance category is submitted as a group or virtual group, then the application of the disincentive would be made at that level (88 FR 74962). CMS referred readers to our prior rulemaking governing groups and virtual groups (81 FR 77073 through 77077) and our regulations at 42 CFR 414.1305 (defining MIPS eligible clinicians as including groups as well as separately defining groups and virtual groups) and 414.1315 (governing virtual groups). Additionally, we refer readers to SSA section 1848(q)(1)(D), which provides the Secretary with authority to establish and apply a process to assess the performance of MIPS eligible clinicians in a group practice as a whole group under MIPS, including the group’s performance in the Promoting Interoperability performance category.

In the Disincentives Proposed Rule, CMS explained that MIPS eligible clinicians who submit data as a part of a group, virtual group, or individually will be evaluated as an individual or as a group for all performance categories (88 FR 74962). We clarify in this final rule that if a MIPS eligible clinician reports data for MIPS as a group and an individual, the payment adjustment will be based on the highest final score.³⁵ Beginning with the CY 2021 performance period/2023 MIPS payment year, if a TIN/NPI has a virtual group final score associated with it, CMS will use the virtual group final score to determine the MIPS payment adjustment; if a TIN/NPI does not have a virtual group final score associated with it, we will use the highest available final score associated with the TIN/NPI to determine the MIPS payment adjustment (85 FR 84917 through 84919). CMS noted that it would apply the MIPS payment adjustment factor to the Medicare Part B claims during the

³⁵ Although CMS did not include this clarification in the Disincentives Proposed Rule, this statement is consistent with existing MIPS policies governing individual and group reporting. See the CY 2017 Quality Payment Program final rule (81 FR 77330 through 77332).

MIPS payment year for the MIPS eligible clinicians in the group or virtual group. Thus, CMS proposed that, if CMS is calculating a final score and MIPS payment adjustment factor for a group or virtual group and OIG refers a finding of information blocking to CMS, CMS would apply the proposed disincentive to the whole group.

The following is a summary of the comments we received and our responses.

Comments. A few commenters requested clarification on the proposal to apply the disincentive at the group level. Others requested clarification on how OIG would address a group practice that committed information blocking, but that does not participate in MIPS at the group level. Another commenter requested additional information on how CMS would address instances in which a MIPS eligible clinician that is found to have committed information blocking reports both as a group and as an individual, how this policy will be applied to subgroups when a subgroup is identified, and whether the appropriate disincentive will be applied to an entire group, regardless of whether the information blocking practice was limited to a particular subgroup.

Response. In situations where OIG refers a determination of information blocking for multiple NPIs we would apply the disincentive to each NPI. If OIG determines a group consisting of one or more MIPS eligible clinicians has committed information blocking and the MIPS eligible clinicians submit data as a group, the disincentive would be applied at the group level. However, as discussed in more detail below, consistent with PHSA section 3022(a)(6), if OIG determines a single MIPS eligible clinician within a group has committed information blocking (and not the group itself), then we would seek to apply the disincentive to the individual MIPS eligible clinician.

Comments. Several commenters expressed concern that this proposal would discourage group, virtual group, and subgroup reporting, which commenters stated would undermine CMS' goals of reducing the overall reporting burden and increasing participation in value-based payment models. Commenters expressed that the proposal could dissuade health care providers from reporting at the group level, due to concerns about being unfairly penalized for the actions of one bad actor in a group and may impact participation in virtual groups even more because clinicians may practice in different locations and may use different EHR systems.

Response. We disagree with the commenters that finalizing this disincentive policy will discourage group submissions, as we believe the benefits of group reporting outweigh the potential risk of being subject to a disincentive, as MIPS eligible clinicians that comply with the information blocking regulations will not be subject to a disincentive. We have finalized that, if OIG determines the group has committed information blocking, then we will apply the disincentive to the group. However, as discussed in more detail below, consistent with PHSA section 3022(a)(6), if OIG determines a single MIPS eligible clinician within a group has committed information blocking (and not the group itself), then we would seek to apply the disincentive to the individual MIPS eligible clinician.

Comments. Many commenters did not support the proposal to apply the disincentive at the group level, noting that the proposal is overly punitive. Some commenters noted that in large groups hundreds or thousands of MIPS eligible clinicians could be penalized for the action of one within the group. Some commenters noted that a TIN serves many purposes and cannot be easily undone to avoid a disincentive for a group.

Response. We thank commenters for their feedback but decline to modify our proposal in response to these comments. MIPS eligible clinicians do not have to report data as a group; it is a choice that they make. However, as discussed in more detail below, consistent with PHSA section 3022(a)(6), if OIG determines a single MIPS eligible clinician within a group has committed information blocking (and not the group itself), then we would seek to apply the disincentive to the individual MIPS eligible clinician.

Comments. Another commenter requested clarification on how a case would be handled in which a health care provider commits information blocking during a specific MIPS performance period, and then moves to a new practice before the application of the MIPS payment adjustment.

Response. We will apply the disincentive to the MIPS payment year 2 years after CMS receives the information blocking referral from OIG. The application of the disincentive will follow the MIPS eligible clinician.³⁶ As discussed in more detail below, consistent with PHSA section 3022(a)(6), if OIG determines a single

MIPS eligible clinician within a group has committed information blocking (and not the group itself), then we would seek to apply the disincentive to the individual MIPS eligible clinician.

Comments. Several commenters recommended that CMS apply the disincentive only to the health care provider(s) that were found to have committed information blocking rather than the entire group or virtual group. Some noted that an entire group or individuals not practicing in the same location or have a direct relationship should not be punished for the actions of another individual that may be beyond their control. A few commenters recommended individual physicians found to be information blockers could be excluded from the group data or be required to report and be assessed separately. One commenter contended that punishing the entire group for the behavior of one individual appears to be contrary to the definitions at PHSA 3022(a)(6). One commenter requested that CMS look at the details of the case, determine the extent of and institutional role of the information blocking, and provide appropriate corrective action recommendations and education. One commenter recommended disincentives be applied to individual health care providers unless the subgroup or group has adopted enterprise-wide policies or taken actions as an enterprise that constitute information blocking. Some commenters requested that CMS work to determine a more equitable way to apply a disincentive in these situations, including a later application of the disincentive.

Response. We acknowledge commenters' concerns with the policy we proposed for group reporting. PHSA section 3022(a)(6) relates to limiting what conduct can be determined to constitute information blocking. We will comply with PHSA section 3022(a)(6) in applying the disincentive we have finalized for the MIPS Promoting Interoperability performance category. If OIG determines that a group³⁷ has committed information blocking and the group reports at the group level, then we would apply the disincentive to the group. If OIG determines that multiple individual MIPS eligible clinicians within a group have committed information blocking and they report at the individual level, then we would apply the disincentive to each MIPS eligible clinician individually. However, if OIG determines an individual MIPS

³⁶ For more information, see: the CY 2017 Quality Payment Program Final Rule (81 FR 77330 through 77332).

³⁷ We define this term in our regulation at 42 CFR 414.1305 as a single TIN of two or more eligible clinicians (including at least one MIPS eligible clinician), as identified by their individual NPI, who have reassigned their billing rights to the TIN.

eligible clinician within a group has committed information blocking (and not the group itself), then we would seek to apply the disincentive to the individual MIPS eligible clinician.

To clarify this intent, we are finalizing our proposed amendment to the definition of meaningful EHR user for MIPS at § 414.1305 with modification. Specifically, we are adding language reflecting the requirement at PHSA section 3022(a)(6), providing that the term “information blocking,” with respect to an individual MIPS eligible clinician or group, shall not include an act or practice other than an act or practice committed by such individual MIPS eligible clinician or group. We will seek to address in future rulemaking how we will effectuate this requirement, including how we may disaggregate an individual MIPS eligible clinician’s data from a group’s data if OIG determines that only the individual MIPS eligible clinician (and not the group) committed information blocking.

Comments. A few commenters specifically expressed concern that the existing MIPS review process would not address the underlying information blocking determination or cause of the zero score for the MIPS Promoting Interoperability performance category because it would not address the information blocking finding itself. One commenter expressed concern that there would be no mechanism for physicians to appeal the appropriateness of the specific disincentives chosen by CMS once it has received an information blocking determination referral from OIG. One commenter requested additional clarification on how the targeted review process within MIPS would apply to information blocking disincentives.

Response. As discussed in section III.B.2. of this final rule, the Cures Act did not provide instruction regarding appeals of disincentives for health care providers established under PHSA section 3022(b)(2)(B). Therefore, any right to appeal administratively a disincentive, if available, would be provided under the authorities used by the Secretary to establish the disincentive through notice and comment rulemaking. We refer readers to the targeted review process we established at 42 CFR 414.1385(a) in accordance with SSA section 1848(q)(13)(A).

After consideration of the public comments, we have finalized our proposed amendment to the definition of meaningful EHR user for MIPS at § 414.1305 with modification. Specifically, we have added language reflecting the requirement at PHSA

section 3022(a)(6), providing that the term “information blocking,” with respect to an individual MIPS eligible clinician or group, shall not include an act or practice other than an act or practice committed by such individual MIPS eligible clinician or group. We will seek to address in future rulemaking how we will effectuate this requirement, including how we may disaggregate an individual MIPS eligible clinician’s data from a group’s data if OIG determines that only the individual MIPS eligible clinician (and not the group) committed information blocking.

(2) Reweighting Policies

In the Disincentives Proposed Rule we noted that CMS has established policies that result in the reweighting of the Promoting Interoperability performance category for certain MIPS eligible clinicians at 42 CFR 414.1380(c)(2) (88 FR 74962). These include but are not limited to hospital-based clinicians (81 FR 77238 through 77420, 82 FR 53684, and 82 FR 53686 through 53687) and Ambulatory Surgical Center-based clinicians (82 FR 53684). CMS did not propose changes to its existing reweighting policies for MIPS eligible clinicians in the Disincentives Proposed Rule.

Starting with the CY 2022 performance period/2024 MIPS payment year performance period CMS automatically reweights small practices for the Promoting Interoperability performance category (86 FR 65485 through 65487; 42 CFR 414.1380(c)(2)(i)(C)(9)). CMS did not propose changes to our existing policy for MIPS eligible clinicians in small practices in the Disincentives Proposed Rule.

CMS noted in the Disincentives Proposed Rule that if these MIPS eligible clinicians choose to submit data for the Promoting Interoperability performance category, their reweighting is canceled, and they could be subject to a disincentive if OIG refers a determination of information blocking to CMS (88 FR 74962).

Comments. A few commenters supported CMS’ decision to not propose any changes to the existing MIPS reweighting policies.

Response. We thank commenters for their support.

Comments. Several commenters requested that CMS clarify how the existing significant hardship exemptions for the MIPS Promoting Interoperability performance category will interact with the proposed MIPS disincentives.

Response. CMS did not propose any changes to the existing reweighting

policies for significant hardship or other types of exceptions for the MIPS Promoting Interoperability performance category set forth at 42 CFR 414.1380(c)(2)(i)(C). These reweighting policies provide bases by which CMS may reweight the 25 percent weight assigned to the MIPS Promoting Interoperability performance category and redistribute that weight to other categories on which the MIPS eligible clinician may be scored in accordance with 42 CFR 414.1380(c)(2)(ii). If CMS reweights the Promoting Interoperability performance category to zero percent in accordance with these reweighting policies, then the Promoting Interoperability performance category is not assigned any score (zero or otherwise) and is not included in CMS’s calculation of the MIPS eligible clinician’s final score.

To clarify, if the Promoting Interoperability performance category is reweighted to zero percent for a given performance period/MIPS payment year in accordance with these policies, then CMS does not assess whether the MIPS eligible clinician is a meaningful EHR user and, therefore, does not include any score for the performance category in the MIPS eligible clinician’s final score. In this circumstance, this disincentive would not affect the MIPS eligible clinician’s final score.

Comments. One commenter requested guidance on how CMS would decide which disincentive to apply to a case in which a hospitalist is found to have engaged in information blocking. One commenter also supported CMS’ proposal to not impact the status or MIPS scoring of “non-patient facing” and “hospital-based” MIPS eligible clinicians, or other MIPS eligible clinicians automatically reweighted from the Promoting Interoperability performance category.

Response. A hospitalist likely may be a licensed physician meeting the definition of MIPS eligible clinician set forth at 42 CFR 414.1305. We refer readers to our discussion in section III.C.3.b.(1) of the Disincentives Proposed rule (88 FR 74959) and this final rule regarding the alignment of definitions of MIPS eligible clinician and health care provider under the PHSA.

Whether an individual or group is subject to MIPS and its requirements will be determined in accordance with the applicable statute at SSA section 1848(q) and our regulations at 42 CFR part 414, subpart O. We note that, in the Disincentives Proposed Rule, CMS did not propose any changes to the MIPS reweighting policies at 42 CFR 414.1380(c)(2) (88 FR 74962). Therefore,

if a hospitalist meets the definition of a hospital-based MIPS eligible clinician at 42 CFR 414.1305, CMS may continue to reweight the Promoting Interoperability performance category to zero percent for the hospitalist in accordance with 42 CFR 414.1380(c)(2)(i)(C)(6), subject to any other applicable requirements.

We did not make any proposals in this section. We note that, if a MIPS eligible clinician submits data for the Promoting Interoperability performance category, their reweighting may be cancelled in accordance with 42 CFR 414.1380(c)(2)(i)(C), and they could be subject to a disincentive if OIG refers a determination of information blocking to CMS.

d. Notification of the Disincentive

In the Disincentives Proposed Rule we noted that after OIG has determined that a health care provider has committed information blocking and referred that health care provider to CMS, CMS would notify the MIPS eligible clinician that OIG determined that the eligible clinician committed information blocking as defined under 45 CFR 171.103, and thus the MIPS eligible clinician was not a meaningful EHR user for the performance period in the calendar year when OIG referred its information blocking determination to CMS (88 FR 74962). We stated that we would apply the proposed disincentive to the MIPS payment year associated with the calendar year in which the OIG referred its determination to CMS. We noted that this notice would be issued in accordance with the notice requirements for disincentives proposed in 45 CFR 171.1002 (see also section III.B.2. of the Disincentives Proposed Rule and this final rule).

CMS invited public comment on this proposal.

The following is a summary of the comments we received and our responses.

Comments. One commenter expressed concern that applying disincentives within MIPS without providing the physician an opportunity to correct the issue would cause financial harm to practices, reduce the resources practices have available to develop robust information sharing capabilities, and disincentivize quality reporting and improvement efforts.

Response: We did not propose a mechanism by which MIPS eligible clinicians could engage in a corrective action plan or other activity to demonstrate compliance and avoid a disincentive. We remind readers that the definition of information blocking in PHSA section 3022(a) requires that a health care provider “knows” that a

practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information.

After consideration of the public comments, CMS has finalized its proposal to notify a MIPS eligible clinician that OIG determined that the MIPS eligible clinician committed information blocking as defined under 45 CFR 171.103, and, in accordance with the definition of “meaningful EHR user,” that the MIPS eligible clinician was not a meaningful EHR user for the performance period in the calendar year when OIG referred its information blocking determination to CMS.

4. Medicare Shared Savings Program

a. Background

(1) Statutory Authority for Disincentive

In the Disincentives Proposed Rule, we explained that Section 3022 of the Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111–148, Mar. 23, 2010) added section 1899 to the Social Security Act (SSA) (42 U.S.C. 1395jjj), which established the Medicare Shared Savings Program (Shared Savings Program) (88 FR 74963). In accordance with the statute, groups of providers of services and suppliers (referred to herein as “ACO participants”) and their associated health care providers (referred to herein as “ACO providers/suppliers”) meeting criteria specified by the Secretary may work together to manage and coordinate care for Medicare fee-for-service beneficiaries through an ACO. ACOs that meet quality performance standards established by the Secretary are eligible to receive payments for shared savings the ACO generates for Medicare and to avoid sharing losses at the maximum level. One condition of participation required by the statute is for the ACO to define certain processes, including a mandate to “define processes to promote evidence-based medicine and patient engagement, report on quality and cost measures, and coordinate care, such as through the use of telehealth, remote patient monitoring, and other such enabling technologies” (Social Security Act section 1899(b)(2)(G)).

(2) Shared Savings Program Regulations

In the Disincentives Proposed Rule, we explained that the Shared Savings Program regulations at 42 CFR part 425 set forth, among other things, requirements for ACO eligibility, quality reporting, and other program requirements and beneficiary

protections (88 FR 74963).³⁸ The regulations at 42 CFR 425.116 require that an ACO, as a condition of participation in the Shared Savings Program, must effectuate an agreement with its ACO participants and ACO providers/suppliers (as defined at 42 CFR 425.20). This agreement must expressly require the ACO participant to agree, and to ensure that each ACO provider/supplier billing through the TIN of the ACO participant agrees, to participate in the Shared Savings Program and to comply with the requirements of the Shared Savings Program and all other applicable Federal laws and regulations including, but not limited to: (1) Federal criminal law; (2) The False Claims Act (31 U.S.C. 3729 *et seq.*); (3) The anti-kickback statute (42 U.S.C. 1320a–7b(b)); (4) The civil monetary penalties law (42 U.S.C. 1320a–7a); and (5) The physician self-referral law (42 U.S.C. 1395nn).

CMS has interpreted the requirement at section 1899(b)(1)(G) of the SSA that an ACO coordinates care for assigned beneficiaries using enabling technologies to require an ACO (and, by agreement, an ACO participant and ACO provider/supplier) to, among other things, define its methods and processes established to coordinate care across and among health care providers both inside and outside the ACO and have a written plan to “encourage and promote use of enabling technologies for improving care coordination for beneficiaries” (42 CFR 425.112(b)(4)(i) and (b)(4)(ii)(C)). Enabling technologies may include one or more of the following: electronic health records and other health IT tools; telehealth services, including remote patient monitoring; electronic exchange of health information; and other electronic tools to engage beneficiaries in their care. The ACO must ensure that ACO participants and ACO providers/suppliers comply with and implement the defined care coordination process, including the encouragement and promotion of enabling technologies, and the remedial processes and penalties (including the potential for expulsion) applicable to ACO participants and ACO providers/suppliers for failure to comply with and implement the required process (see 42 CFR 425.112(a)(3)). Sharing health information using enabling technologies across all health care providers engaged in a beneficiary’s care (both inside and

³⁸ Shared Savings Program regulations generally specify standards for an ACO, which is bound by its participation agreement to the standards. CMS generally specifies standards applicable to an ACO participant and ACO provider/supplier that is participating in the ACO through its regulation of the ACO.

outside the ACO) for purposes of care coordination and quality improvement is an essential aspect of the ACO's activities. Moreover, this type of information sharing among health care providers (both inside and outside the ACO) supports quality measurement and quality reporting activities, which are necessary for the ACO to be eligible to share in savings and are also used in determining the amount of shared losses.

Before the start of an agreement period, before each performance year thereafter, and at such other times as specified by CMS, the ACO must submit to CMS an ACO participant list and an ACO provider/supplier list (see 42 CFR 425.118(a); citing 42 CFR 425.302(a)(2)). The ACO must certify the accuracy, completeness, and truthfulness of the data and information contained in the submitted lists annually. All Medicare-enrolled individuals and entities that have reassigned their right to receive Medicare payment to the TIN of the ACO participant must be included on the ACO provider/supplier list and must agree to participate in the ACO and comply with the requirements of the Shared Savings Program before the ACO submits the ACO participant list and the ACO provider/supplier list.

CMS may deny an ACO, ACO participant, and/or an ACO provider/supplier participation in the Shared Savings Program if the entity or individual has a history of program integrity issues (see 42 CFR 425.305(a)(2)). CMS screens ACOs, ACO participants, and ACO providers/suppliers during the Shared Savings Program application process and periodically thereafter (for example, during the annual certification of the ACO participant and ACO provider/supplier lists) with regard to their program integrity history (including any history of Medicare program exclusions or other sanctions and affiliations with individuals or entities that have a history of program integrity issues) (see 42 CFR 425.305(a)(1)). In the Medicare Shared Savings Program Final Rule (76 FR 67802), CMS stated that the results of the screening would be considered in light of the relevant facts and circumstances. CMS did not draw a bright line regarding when an entity's history of program integrity issues would justify denial of a Shared Savings Program participation agreement. CMS stated instead that we would likely consider the nature of the applicant's program integrity issues (including the program integrity history of affiliated individuals and entities), the available evidence, the entity's diligence in identifying and correcting the problem,

and other factors. CMS stated that we intended to ensure that ACOs, ACO participants, and ACO providers/suppliers would not pose a risk of fraud or abuse within the Shared Savings Program while recognizing that some program integrity allegations may not have been fully adjudicated.

CMS may terminate an ACO's Shared Savings Program participation agreement if the ACO, its ACO participants, or its ACO providers/suppliers or other individuals or entities performing functions or services related to ACO activities fail to comply with any of the requirements of the Shared Savings Program under 42 CFR part 425 (§ 425.218(a) and (b)). This includes, but is not limited to, violations of the physician self-referral prohibition, CMP law, Federal anti-kickback statute, antitrust laws, or any other applicable Medicare laws, rules, or regulations that are relevant to ACO operations. Similarly, CMS requires that the agreement the ACO effectuates with its ACO participants must permit the ACO to take remedial action against the ACO participant, and must require the ACO participant, in turn, to take remedial action against its ACO providers/suppliers, including imposition of a corrective action plan, denial of incentive payments, and termination of the ACO participant agreement, to address noncompliance with the requirements of the Shared Savings Program and other program integrity issues, including program integrity issues identified by CMS (42 CFR 425.116(a)(7)). Taken together, these regulations ensure that CMS may take appropriate enforcement actions when CMS' screening process or oversight of an ACO reveals a history of program integrity issues and when an ACO, an ACO participant or an ACO provider/supplier and other individuals or entities performing functions or services related to ACO activities fail to comply with the requirements of the Shared Savings Program, including failure to comply with other Federal laws that are relevant to the ACO's operations, such as the Cures Act's information blocking provision (PHSA section 3022).

b. Provisions

In the Disincentives Proposed Rule, CMS proposed to revise the Shared Savings Program regulations to establish disincentives for health care providers, including ACOs, ACO participants, or ACO providers/suppliers, that engage in information blocking (88 FR 74964). CMS proposed that a health care provider that OIG determines has committed information blocking may

not participate in the Shared Savings Program for a period of at least 1 year.

In the Disincentives Proposed Rule, we discussed that information blocking runs contrary to the care coordination goals of the Shared Savings Program (88 FR 74964). ACO participants and their ACO providers/suppliers participating in an ACO in the Shared Savings Program use enabling technologies (such as electronic health records) to improve care coordination for beneficiaries. The ability of ACO providers/suppliers to exchange information between health care providers (both inside and outside the ACO) is essential for the operations of the ACO, including for effective coordination of care and quality improvement activities and services for assigned beneficiaries.

In the Disincentives Proposed Rule, first, CMS proposed to amend 42 CFR 425.208(b) to include a specific reference to the Cures Act information blocking provision codified in the PHSA (88 FR 74964). We noted that the provision would be one of many laws with which ACOs (and by agreement, their ACO participants and ACO providers/suppliers) must comply.³⁹ We noted that in this case, compliance is required because a Medicare enrolled "health care provider," to which an information blocking disincentive may apply, includes ACO providers/suppliers (See 42 CFR 400.202 and 425.20 and 45 CFR 171.102). We explained that the effect of adding a specific reference to the information blocking provision would be to require that, as a condition of participation in the Shared Savings Program, an ACO must specifically agree (and must require its ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to the ACO's activities to agree) to not commit information blocking as defined in PHSA section 3022(a).

Second, CMS proposed to revise 42 CFR 425.305(a)(1) to specify that the program integrity history on which ACOs, ACO participants, and ACO providers/suppliers are reviewed during the Shared Savings Program application process and periodically thereafter includes, but is not limited to, a history of Medicare program exclusions or other sanctions, noncompliance with the requirements of the Shared Savings Program, or violations of laws specified at 42 CFR 425.208(b) (88 FR 74964). We

³⁹CMS notes that the list of laws included at 42 CFR 425.208(b) with which an ACO must comply is not an exclusive list. ACOs, ACO participants, and ACO providers/suppliers must continue to comply with all applicable Federal laws.

explained that this revision would provide the basis for CMS to deny participation in the Shared Savings Program to a health care provider that is an ACO, an ACO participant, or an ACO provider/supplier when the health care provider has engaged in information blocking, as determined by OIG.

Third, CMS proposed to make a conforming modification to the provision related to the grounds for CMS to terminate an ACO at 42 CFR 425.218(b)(3) based on “[v]iolations of the physician self-referral prohibition, civil monetary penalties (CMP) law, Federal anti-kickback statute, antitrust laws, or any other applicable Medicare laws, rules, or regulations that are relevant to ACO operations.” CMS proposed to replace this language with “[v]iolations of any applicable laws, rules, or regulations that are relevant to ACO operations, including, but not limited to, the laws specified at § 425.208(b)” (88 FR 74964).

Pursuant to CMS’ authority under 42 CFR 425.206(a)(1) to deny an ACO’s participation in the Shared Savings Program, CMS’ authority under 42 CFR 425.118(b)(1)(iii) to deny the addition of a health care provider to an ACO’s participation list, and CMS’ authority under 42 CFR 425.305(a) to screen for program integrity issues, CMS proposed to screen ACOs, ACO participants, and ACO providers/suppliers for an OIG determination of information blocking and deny the addition of such a health care provider to an ACO’s participation list for the period of at least 1 year (88 FR 74964). In the case of an ACO that is a health care provider, CMS proposed to deny the ACO’s application to participate in the Shared Savings Program for the period of at least 1 year. We noted that if the ACO were to re-apply to participate in the Shared Savings Program in a subsequent year, then CMS would review whether OIG had made any subsequent determinations of information blocking with respect to the ACO as a health care provider as well as any evidence that indicated whether the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence, as part of the ACO’s application process. CMS therefore proposed in the Disincentives Proposed Rule that, in cases where the result of the program integrity screening identifies that an ACO (acting as a health care provider), ACO participant, or ACO provider/supplier, has committed information blocking, as determined by OIG, CMS would take the following actions, as applicable:

- Pursuant to 42 CFR 425.118(b)(1)(iii), CMS would deny the request of the ACO to add an ACO participant to its ACO participant list on the basis of the results of the program integrity screening under 42 CFR 425.305(a).
 - Pursuant to 42 CFR 425.116(a)(7) and (b)(7), CMS would notify an ACO currently participating in the Shared Savings Program if one of its ACO participants or ACO providers/suppliers is determined by OIG to have committed information blocking so that the ACO can take remedial action—removing the ACO participant from the ACO participant list or the ACO provider/supplier from the ACO provider/supplier list—as required by the ACO participation agreement.
 - Pursuant to 42 CFR 425.305(a)(2), CMS would deny an ACO’s Shared Savings Program application if the results of a program integrity screening under 42 CFR 425.305(a)(1) reveal a history of program integrity issues or other sanctions and affiliations with individuals or entities that have a history of program integrity issues.
 - Pursuant to 42 CFR 425.218(a) and (b)(3), CMS would terminate an ACO participation agreement in the case of a failure to comply with requirements of the Shared Savings Program, including violations of any applicable laws, rules, or regulations that are relevant to ACO operations, including, but not limited to, the laws specified at 42 CFR 425.208(b) (88 FR 74964 and 74965).
- In the Disincentives Proposed Rule, CMS noted that each of these actions would deter information blocking consistent with the discussion of an appropriate disincentive in section III.A.3. of the Disincentives Proposed Rule (88 FR 74965). We noted that restricting the ability for these entities to participate in the Shared Savings Program for at least 1 year would result in these health care providers potentially not receiving revenue that they might otherwise have earned if they had participated in the Shared Savings Program.
- In the Disincentives Proposed Rule, CMS stated that the period of time of the disincentive would be at least 1 performance year (88 FR 74965). We explained that we would determine if it would be appropriate for the period to exceed 1 year if OIG has made any subsequent determinations of information blocking (for example, CMS would be unlikely to impose a disincentive greater than 1 year if the information blocking occurred in the past and there was evidence that the information blocking had stopped) and whether safeguards have been put in

place to prevent the information blocking that was the subject of OIG’s determination. We noted that prior to imposing any disincentive arising from an OIG determination of information blocking, CMS would provide a notice in accordance with the notice requirements proposed in 45 CFR 171.1002 (88 FR 74953) that would specify the disincentive would be imposed for at least 1 performance year.

In the Disincentives Proposed Rule, CMS proposed to apply the disincentive no sooner than the first performance year after we receive a referral of an information blocking determination from OIG and in which the health care provider is to participate in the Shared Savings Program (88 FR 74965). We explained in the Disincentives Proposed Rule that CMS performs a program integrity screening of ACOs, ACO participants, and ACO providers/suppliers as part of the annual application/change request process for new and existing ACOs, which typically occurs between May and October during the performance year. In the case of the new addition of an ACO participant (TIN) to an ACO’s participant list, CMS stated that we would prevent the TIN from joining the ACO as an ACO participant if the program integrity screening reveals that the TIN has engaged in information blocking, as determined by OIG. In the case of an existing ACO participant, CMS stated that we would notify the ACO that an ACO participant or an ACO provider/supplier had committed information blocking, as determined by OIG, so the ACO can remove the ACO participant or ACO provider/supplier from its ACO participant list or ACO provider/supplier list, as applicable. If the TIN were to remain on the ACO participant list or ACO provider/supplier list when the ACO certifies its ACO participant list for the next performance year, we stated that then CMS would issue a compliance action to the ACO. We noted that continued noncompliance (for example, failure to remove the TIN) would result in termination of the ACO’s participant agreement with CMS, as the ACO would have failed to enforce the terms of its ACO participant agreement.

In the Disincentives Proposed Rule, CMS stated that applying the disincentive prospectively is the most appropriate timing for the disincentive (88 FR 74965). We noted that it would be impractical and inequitable for CMS to apply the disincentive retrospectively or in the same year in which CMS received a referral from OIG. Applying the disincentive to a historical performance year or a performance year

contemporaneous to the OIG's determination would unfairly affect other ACO participants that did not commit the information blocking and likely were not aware of the information blocking. CMS recognized, however, that the prospective application of the disincentive means that it may be applied to a health care provider substantially after the information blocking occurred, during the provider's first attempt to participate in the Shared Savings Program, and after the provider was previously subject to a disincentive in another program, such as MIPS. As discussed in the Disincentives Proposed Rule (88 FR 74966) and below, CMS contemplated an approach under which a health care provider could participate in the Shared Savings Program if a significant amount of time (for example, 3 to 5 years) had passed between the occurrence of the information blocking and OIG's determination, and the provider had given assurances in the form and manner specified by CMS that the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence.

In the Disincentives Proposed Rule, CMS explained that after the completion of the last performance year in which the disincentive was applied, an ACO may submit a change request to add the TIN or include the NPI on its ACO participant list or ACO provider/supplier list, as applicable, for a subsequent performance year, and CMS would approve the addition, assuming that all other Shared Savings Program requirements for adding a TIN or NPI are met, so long as (1) OIG has not made any additional determinations of information blocking, and (2) the ACO provides assurances (in the form and manner required by CMS) that the information blocking is no longer ongoing and that the ACO has put safeguards in place to prevent the information blocking that was the subject of the referral (88 FR 74965). If, however, OIG made and referred an additional information blocking determination (that is either related or unrelated to the previous OIG referral) in a subsequent year or the ACO cannot provide assurance that the information blocking has ceased, we discussed that CMS would continue to deny participation.

In addition, in the Disincentives Proposed Rule, we stated that CMS would notify ACOs about an ACO participant or ACO provider/supplier that had committed information blocking, as determined by OIG, so that the ACO could take remedial action—removing the ACO participant from the ACO participant list or the ACO

provider/supplier from the ACO provider/supplier list—as required by the ACO participant agreement (88 FR 74965). We noted that ACOs are well-positioned to take remedial action against ACO participants and ACO providers/suppliers that have been found by OIG to have committed information blocking as a result of their ACO participant agreements, which provide for the ACO to take remedial action against the ACO participant, and require the ACO participant to take remedial action against its ACO providers/suppliers, including imposition of a corrective action plan, denial of incentive payments, and termination of the ACO participant agreement, to address noncompliance with the requirements of the Shared Savings Program and other program integrity issues.

By way of example, consider if in January 2025, OIG determined that an ACO participant has committed information blocking as recently as 2024 and referred this determination to CMS. In the Disincentives Proposed Rule, CMS explained that under the proposal, the ACO participant would be able to remain on the ACO's certified participant list for the duration of the 2025 performance year (88 FR 74965). However, we explained that CMS would notify the ACO that an ACO participant had been determined to have committed information blocking by OIG and that CMS expected the ACO to take remedial action by removing the ACO participant from its ACO participant list for a specified period of time. To determine if removal was warranted for a period in addition to performance year 2026, CMS stated that it would consider whether there was any evidence to suggest that that information blocking was still occurring (for example, whether OIG had made a subsequent determination of information blocking) and whether safeguards had been put in place to prevent the information blocking that was the subject of the referral. In the Disincentives Proposed Rule, we noted that upon a review of these criteria, CMS may require the affected ACO to remove the ACO participant prior to recertification of the ACO participant list for additional performance years. If the ACO participant were to remain when the ACO certifies its ACO participant list for performance year 2026, we explained that CMS would inform the ACO that it was obligated to take remedial action against the ACO participant by removing it from the ACO participant list for performance year 2026; if it failed to do so, CMS would remove the ACO participant from the

ACO's participant list and take compliance action against the ACO up to terminating the ACO pursuant to 42 CFR 425.218(b)(1) and (3). In the case of a disincentive that was applied only for performance year 2026, we explained that if the ACO were to submit a change request to add the ACO participant for performance year 2027 or a subsequent year, then CMS would review whether OIG had made any subsequent determinations of information blocking with respect to the ACO participant as well as any evidence that indicated whether the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence, prior to approving the ACO participant to participate in the ACO for performance year 2027 or the subsequent year.

In the Disincentives Proposed Rule, we explained that if an ACO applicant or a renewal ACO applicant that is itself a health care provider (for example, a large multi-specialty practice that forms a single participant ACO using its existing legal entity and governing body under 42 CFR 425.104) is the subject of an OIG information blocking determination, CMS would deny the ACO's application for participation in the Shared Savings Program for the upcoming performance year for which it was applying to participate (88 FR 74966). CMS noted that should OIG make a determination of information blocking with respect to an ACO that is already participating in the Shared Savings Program and refer the determination to us for the application of a disincentive, CMS may terminate the ACO's participation agreement for the upcoming performance year. We stated that CMS would assess a subsequent application from an ACO to which the disincentive had been applied under the same criteria described for assessing the return of an ACO participant or ACO provider/supplier. We noted that the ACO may participate in the Shared Savings Program after the duration of the disincentive so long as OIG had not made a subsequent determination of information blocking applicable to the health care provider and whether there was evidence that the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence, prior to approving the ACO's application to participate in the Shared Savings Program in a subsequent performance year.

In the Disincentives Proposed Rule, CMS also considered an alternative policy in which CMS would not apply a disincentive in certain circumstances despite an OIG information blocking

determination. CMS explained that under this alternative policy, the Shared Savings Program would consider OIG's referral of an information blocking determination in light of the relevant facts and circumstances before denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), or denying an ACO's application to participate in the Shared Savings Program (88 FR 74966). We explained that the relevant facts and circumstances could include the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, the time since the OIG's determination of information blocking, and other factors. We noted that this alternative policy would offer some flexibility in certain circumstances, where prohibiting an ACO, ACO participant, or ACO provider/supplier from participating in the Shared Savings Program would distort participation incentives and therefore be less appropriate. We noted that we were particularly concerned about situations in which many years have passed since an ACO participant or ACO provider/supplier was found to be an information blocker and such an issue had long been remediated. We noted that in such a case, the ACO participant or ACO provider/supplier might be incentivized to apply to the Shared Savings Program for a year in which it did not actually intend to participate merely to avoid being barred from doing so at a future date when it did intend to participate, wasting the resources of the ACO and CMS. We explained that, under such an alternative policy, a health care provider could participate in the Shared Savings Program if a significant amount of time had passed between the occurrence of the information blocking and the OIG's determination, and the provider had given assurances in the form and manner specified by CMS that the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence.

In the Disincentives Proposed Rule, we noted that an ACO may be able to appeal the application of an information blocking disincentive in the Shared Savings Program (88 FR 74966). An ACO may appeal an initial determination that is not prohibited from administrative or judicial review under 42 CFR 425.800 by requesting a

reconsideration review by a CMS reconsideration official (42 CFR 425.802(a)). To the extent it is not barred by 42 CFR 425.800, an ACO may appeal the removal or denial of a health care provider from an ACO participant list as a result of the referral by OIG of an ACO participant that OIG had determined to be an information blocker. Subject to the same limitation, an ACO applicant or ACO may appeal the denial of the ACO applicant's application or termination of the ACO's participation agreement as a result of the referral by OIG of the ACO applicant or ACO that the OIG had determined to be an information blocker. We explained that the underlying information blocking determination made by OIG, however, would not be subject to the Shared Savings Program's reconsideration process. We noted that the OIG determination is not an initial determination made by CMS, but a determination made by another agency. The Shared Savings Program reconsideration process may not negate, diminish, or otherwise alter the applicability of determinations made by other government agencies (see 42 CFR 425.808(b)).

In the Disincentives Proposed Rule, we reminded all health care providers and ACOs that it is possible that a health care provider or any entity, such as an ACO, may meet the definition of a HIN/HIE, which is a functional definition, or the definition of a health IT developer of certified health IT, codified in 45 CFR 171.102 (88 FR 74966). We noted that if it is found by OIG that such health care provider or entity meets either definition and, while under the same set of facts and circumstances, is also found by OIG to have committed information blocking, then the health care provider or entity would be subject to a different intent standard and civil money penalties administered by OIG (see generally 88 FR 42820; see 88 FR 42828 and 42829).

CMS invited public comment on these proposals and on whether additional actions should be taken.

The following is a summary of the comments we received and our responses.

Comments. Several commenters supported CMS' proposed disincentive for the Shared Savings Program. These commenters explained that the proposed disincentive is consistent with the intent of the Cures Act and that it will help promote widespread electronic exchange of health information across the healthcare spectrum. Commenters also explained that the proposal is consistent with an ACO's goal to utilize technologies like

EHRs to facilitate care coordination, quality improvement activities, and patient-centered care. One commenter supported the proposed disincentive for the Shared Savings Program because it would impact a wider set of health care providers and thus have a greater deterrent effect among health care providers compared to the proposed disincentives for the Medicare Promoting Interoperability Program and MIPS. Another commenter specifically supported the proposal to apply the disincentive for at least 1 year and explained that the proposed approach is appropriate and consistent with the other disincentives proposed in this rulemaking.

Response. We agree that sharing health information using enabling technologies across all health care providers engaged in a beneficiary's care (both inside and outside the ACO) for purposes of care coordination and quality improvement is an essential activity for health care providers participating in an ACO in the Shared Savings Program. This type of information sharing among health care providers (both inside and outside the ACO) supports care coordination, quality measurement, and quality reporting activities, which are necessary in order for the ACO to participate in the Shared Savings Program. We appreciate commenters' support for the proposal to revise the Shared Savings Program regulations to establish disincentives for health care providers, including ACOs, ACO participants, or ACO providers/suppliers, that engage in information blocking. We agree that the proposal meets the objectives of the Cures Act by establishing appropriate disincentives for health care providers, as defined in 45 CFR 171.102, that have been determined by OIG to have committed information blocking.

Comments. Many commenters opposed the proposal to deny ACOs, ACO participants, and ACO providers/suppliers from participating in the Shared Savings Program if they are determined by OIG to have committed information blocking. Commenters stated that the proposal would reduce the number of health care providers and ACOs participating in the Shared Savings Program, which would effectively impede progress towards delivering care based on outcomes, rather than volume, while also disrupting improvements in patient care and diminishing resources that ACOs use to improve patient care. Other commenters stated that prohibiting participation in the Shared Savings Program would disrupt patient care and worsen healthcare quality and

outcomes, explaining that CMS' proposal would deny Medicare patients access to enhanced services that ACOs offer, such as care coordination and case management services. These commenters further explained that if a health care provider is excluded from the Shared Savings Program, it would be impossible to deliver many of those services because providers would no longer receive claims data for their patients from the Shared Savings Program. Several commenters expressed concern that if a health care provider was removed from an ACO, patients assigned to an ACO would no longer have access to that provider or the patient would be forced to find an alternative provider, which could cause treatment delays and disrupt care continuity. Additionally, many commenters explained that the proposal would undermine CMS' goal of having all Medicare beneficiaries in an accountable care relationship by 2030 and would prevent CMS from effectively addressing healthcare costs and quality. Several commenters expressed concern that the proposed disincentive would disproportionately affect health care provider participation in ACOs serving patients in rural areas, dual-eligible beneficiaries, and patients with disabilities. These commenters also raised concerns about the impact on Medicare beneficiaries in rural areas, stating that specialist health care providers participating in ACOs are often the only specialists available to serve these communities.

Response. While we appreciate the commenters' concerns about the potential negative consequences resulting from application of the disincentive, such as reduced participation in value-based care and a reduction of care coordination services, the purpose of the proposal is to implement the Cures Act by creating a disincentive that deters health care providers from committing information blocking. We disagree with commenters' concerns as we do not expect that the proposal would reduce the number of health care providers and ACOs participating in the Shared Savings Program by a significant amount. Removal from, or denial of approval to participate in, the Shared Savings Program would be limited to those health care providers that have committed information blocking, as determined by OIG. Removal is an appropriate disincentive because it protects beneficiaries and denies health care providers the opportunity to benefit financially and reputationally from

participation in the Shared Savings Program.

We disagree with commenters' concerns that application of the disincentive could disrupt patient care and compromise beneficiary outcomes. Beneficiary care would already be negatively affected by information blocking; this disincentive thus is intended to prevent negative outcomes from occurring. Information blocking runs counter to the goals of value-based care, such as care coordination and quality improvement, and health care providers that engage in information blocking may harm beneficiaries by denying them the benefits of value-based care. Furthermore, beneficiaries receiving care from ACO providers/suppliers that regularly engage in information blocking might not receive the full benefits of value-based care because the information blocking may prevent the sharing of information critical to care coordination and quality improvement among the beneficiary's health care providers. With respect to commenters' concerns about how to reconcile the disincentive with CMS' goal of having 100 percent of people with Original Medicare in a care relationship with accountability for quality and total cost of care by 2030,⁴⁰ the proposal aims to deter health care providers from information blocking and hold accountable those health care providers that engage in such practices. In doing so, the proposal supports CMS' broader goal of incentivizing health care providers to coordinate care effectively across care settings so that they can improve patient outcomes and lower costs.

Regarding commenters' concerns that the removal of a health care provider from an ACO due to information blocking would result in ACO beneficiaries no longer having access to their provider, we clarify that this is not the case. The denial of approval to participate in or removal of a health care provider from the Shared Savings Program through the application of this disincentive does not exclude the provider from Medicare. A Medicare beneficiary aligned to an ACO may see the Medicare enrolled health care provider of his or her choice, regardless of whether the provider is a participant or provider/supplier in an ACO. Similarly, we clarify that Medicare beneficiaries in rural areas, dual-eligible beneficiaries, and patients with disabilities, could continue to see a

Medicare enrolled health care provider of their choice, irrespective of whether that health care provider is an ACO participant or ACO provider/supplier.

Based on the comments we received, however, we recognize that denial of approval to participate in or removal from the Shared Savings Program is not warranted in every instance. For this reason and for the additional reasons discussed below, we have finalized the proposal with modifications to incorporate the alternative discussed in the Disincentives Proposed Rule. This will enable us to consider an OIG information blocking determination in light of the relevant facts and circumstances of the information blocking determination and subsequent remediation before applying the disincentive. This approach is consistent with the Cures Act's command to implement "appropriate disincentives" and balances CMS' efforts to improve the quality and efficiency of items and services provided to beneficiaries through value-based care.

Comments. Many commenters supported CMS' alternative policy for the Shared Savings Program in which CMS would consider an OIG information blocking determination in light of the relevant facts and circumstances before denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), or denying an ACO's application to participate in the Shared Savings Program if the remedial action is not taken. Commenters explained that this alternative policy would provide CMS with flexibility to consider an information blocking determination in light of the relevant facts and circumstances, such as whether the health care provider subject to the information blocking determination had taken corrective action and established safeguards to prevent future instances of information blocking or if significant time had passed since the information blocking occurred. One commenter recommended that CMS always consider information blocking determinations in light of the relevant facts and circumstances, including during the initial screening process when CMS reviews ACOs' program integrity history for OIG determinations of information blocking. Another commenter supported the alternative policy, noting that education and remediation would be more appropriate than applying the disincentive. One

⁴⁰ A description of the Innovation Center's strategy to support primary care can be found here: <https://www.cms.gov/blog/cms-innovation-centers-strategy-support-high-quality-primary-care>.

commenter agreed with CMS that the disincentive as proposed may distort participation incentives and that the alternative proposal may help ameliorate these concerns. Another commenter stated that the alternative policy would help CMS balance the need to prevent information blocking while ensuring the financial stability of ACOs and providers participating in the Shared Savings Program. A few commenters recommended that CMS also consider the size of the practice, number of eligible clinicians in the practice, and relationship between the ACO and the entity found to have committed information blocking when applying the disincentive.

Response. We agree with commenters that the alternative policy will allow us to consider an OIG information blocking determination in light of the relevant facts and circumstances before applying a disincentive, such as denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), or denying an ACO's application to participate in the Shared Savings Program if the remedial action is not taken. For an ACO that is already participating in the Shared Savings Program, the alternative policy will also allow us to consider an OIG information blocking determination in light of the relevant facts and circumstances prior to terminating the ACO's participation agreement with CMS for the upcoming performance year. The relevant facts and circumstances include the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, whether the provider was previously subject to a disincentive in another program, and other factors. In the case of an ACO applicant, a renewal ACO applicant, or an ACO participant TIN that would be a new addition to an ACO's participant list, we would request information from the ACO that indicated whether the information blocking had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence. For ACOs, ACO participants, or ACO providers/suppliers that are already participating in the Shared Savings Program, we would issue a compliance action, which would include a request for the same information.

Additionally, we agree with commenters that if the risk of reoccurrence of information blocking has been mitigated, it would be

beneficial to take that into consideration before imposing a disincentive that could interrupt the care coordination benefits of beneficiaries receiving care from ACO participants and ACO providers/suppliers. For example, removal of a large ACO participant TIN that had corrected the information blocking that occurred 10 years prior to OIG's determination and had imposed safeguards to prevent its reoccurrence, could result in the multi-TIN ACO falling below the 5,000 assigned beneficiary threshold required by 42 CFR 425.110(a)(1). Having the discretion to consider the facts and circumstances of the information blocking provider's remediation efforts and past disincentives prior to imposing a disincentive will allow the Shared Savings Program to best determine if removal from, or denial of approval to participate in the Shared Savings Program, is warranted while minimizing unintended consequences for ACOs, ACO participants, and ACO providers/suppliers that had no involvement in the information blocking activity that was the subject of OIG's determination. For these reasons, we have finalized the proposal with modifications to incorporate the alternative policy.

Comments. Many commenters urged CMS to consider implementing less severe disincentives that would encourage compliance with the information blocking regulations without discouraging participation in value-based care models. These commenters recommended that CMS partner with ACOs to identify and remediate cases of information blocking instead of implementing disincentives that affect participation in the Shared Savings Program. The commenters explained that ACOs already have expertise in data sharing and reporting instances of information blocking, thus ACOs are well-positioned to assist HHS in advancing their interoperability goals. A few commenters stated that the proposed disincentive creates arbitrary penalties that neither address the underlying causes of information blocking nor allow health care providers to rectify the behaviors that led to information blocking. Several commenters explained that the proposed disincentive is excessive and disproportionate to the offense and that it may cause more harm than the underlying instance of information blocking.

Response. While we appreciate the commenters' concerns about the perceived severity and appropriateness of the proposed disincentives, information blocking can result in serious and adverse effects on

beneficiary care and outcomes. For this reason, the denial of approval to participate or removal of health care providers that have been determined by OIG to have committed information blocking is both appropriate and proportional to the underlying information blocking activity. We disagree that the proposed disincentive creates arbitrary penalties that fail to address the underlying causes of information blocking and do not permit health care providers to rectify the behaviors that led to information blocking. To the contrary, the proposal would impose a clear disincentive—denial of approval to participate in or removal from the Shared Savings Program for at least 1 year—on the specific health care provider that committed information blocking, as determined by OIG.

Further, the disincentive would not prohibit a health care provider that had committed information blocking, as determined by OIG, from correcting the information blocking activity and participating in the Shared Savings Program in the future. The intent of the proposal is to implement PHSA section 3022(b)(2)(B) by creating a disincentive that discourages health care providers from committing information blocking. It is not clear that merely requiring that a healthcare provider take corrective action would adequately discourage repeated information blocking when one considers that substantial time that may elapse between the information blocking and an OIG determination. With respect to the suggestions that CMS partner with ACOs to identify and remediate cases of information blocking, we encourage ACOs to report any instances of information blocking to ONC or OIG. Given that ACOs are engaged in care coordination and quality improvement activities, they may encounter instances of information blocking as they seek to achieve the goals of accountable care in the Shared Savings Program.

We agree with commenters that depending upon the circumstances of the case, CMS may need more flexibility in applying a disincentive under the Shared Savings Program than was provided for under the proposal. We have therefore finalized the proposal with modifications to incorporate the alternative policy discussed in the Disincentives Proposed Rule (88 FR 74966). This will allow us to consider an OIG information blocking determination in light of the relevant facts and circumstances before applying a disincentive, such as denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/

supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), denying an ACO's application to participate in the Shared Savings Program if the remedial action is not taken, or terminating an ACO's participation agreement with CMS. We reiterate that the relevant facts and circumstances include the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, whether the provider was previously subject to a disincentive in another program, and other factors. As discussed above, this approach achieves the balance of disincentivizing information blocking in the Shared Savings Program while ensuring that CMS can consider whether a health care provider who has committed information blocking, received disincentives elsewhere for it, and corrected the conduct should be barred from participating in the Shared Savings Program prior to imposing a disincentive.

Comments. Commenters expressed concern that the proposal would inadvertently discourage or deter participation in value-based care models, such as the Shared Savings Program, because ACOs and ACO participants face significant disruption and financial instability if they are removed from the Shared Savings Program. Many commenters were concerned that the proposed policy would have negative financial and operational consequences for ACOs. One commenter explained that if an ACO is suspended from the Shared Savings Program or if a large ACO participant or health care provider is removed from an ACO, the resulting financial impact could be the loss of millions of dollars in potential shared savings revenue, which could result in the ACO collapsing completely.

Other commenters expressed concern that the proposed disincentive could upend ACO operations and greatly compound the financial instability of the ACO and participating physician participants. One commenter expressed concern that the proposed disincentive would be especially detrimental for ACOs operating in rural areas, where Medicare Advantage enrollment exceeds traditional Medicare enrollment. The commenter stated that removing even one participant TIN could force the entire ACO to collapse, severely disrupting patient care and punishing not only the TIN that committed information blocking, but also all ACO participants. A few commenters

explained that the potential financial impacts of the proposed disincentive are not aligned with the severity of the underlying information blocking offense. Commenters suggested that the financial disincentives imposed on ACOs should more closely correspond to the severity of the information blocking violation.

A few commenters stated that suspending ACOs from the Shared Savings Program would also cause the government to lose millions of dollars in shared savings. Several commenters also expressed concern that suspension of ACOs from the Shared Savings Program may also make ACOs ineligible for Advanced APM bonus payments. Commenters emphasized that ACOs depend on these bonus payments to cover investment and care coordination costs. Another commenter questioned how the proposal would impact physicians who participate in an ACO but do not meet the Advanced APM threshold for exemption from the MIPS Program. Specifically, the commenter inquired if these physicians who have been found by OIG to have committed information blocking would be removed as an ACO participant and subject to disincentives under the MIPS program. A few commenters expressed concerns that the proposed disincentive would hinder overall data exchange and information sharing that is essential to ACO operations and structure. Another commenter expressed concern that the disincentive would cause adverse financial impacts to the healthcare system and contribute to hospital closures. Finally, one commenter stated that the disincentive may hinder an ACO's ability to meet network adequacy requirements if health care providers who have committed information blocking are removed from the ACO.

Response. We appreciate the commenters' concerns regarding the potential financial and operational impacts on ACOs of disincentives for information blocking. The proposed disincentive will serve as a deterrent to information blocking by health care providers participating in the Shared Savings Program. Commenters' concerns about the negative financial consequences for health care providers and ACOs of the disincentive, as well as how disruptive it may be, support this conclusion.

A strong disincentive is likely to be most appropriate in deterring information blocking given the nature of the activity and its effect on essential aspects of Shared Savings Program. Information blocking is not an inadvertent practice. A health care provider has only committed

information blocking if the provider engaged in a practice that the provider "[knew] is unreasonable and likely to interfere with access, exchange, or use of electronic health information" (45 CFR 171.103). As discussed above, information blocking runs contrary to the overarching goals of the Shared Savings Program, as the ability of ACO participants and ACO providers/suppliers to exchange information between health care providers (both inside and outside the ACO) is essential for the operations of the ACO, including for effective coordination of care, quality improvement activities, and related services for assigned beneficiaries. If health care providers participating in the Shared Savings Program are determined by OIG to have committed information blocking, it is reasonable to remove or prevent any such health care providers from participating in the Shared Savings Program for at least one performance year, given that the health care providers intentionally acted in a manner that may have impaired activities central to the Shared Savings Program: care coordination and improvement in the quality and efficiency of beneficiary care.

We disagree with the commenters' statement that suspending ACOs from the Shared Savings Program would also cause the government to lose millions of dollars in shared savings. The participation of information blockers in the Shared Savings Program undermines the integrity of the program and may harm an ACO's efforts to coordinate and improve the quality and efficiency of beneficiary care. Moreover, if ACOs that have committed information blocking (as determined by OIG) are removed from the Shared Savings Program for at least one performance year, their removal may actually prevent losses by shifting government resources to ACOs that are focused on care coordination and quality improvement activities. With respect to the impact the proposed disincentive will have on cost savings in the Medicare program, as discussed in the Regulatory Impact Statement of the Disincentives Proposed Rule (88 FR 74967), the expected benefits of this rule would be to deter information blocking that interferes with effective health information exchange and negatively impacts many important aspects of healthcare. We refer readers to the impact analysis of the benefits of prohibiting and deterring information blocking in the ONC Cures Act Final Rule (85 FR 25936).

Regarding whether clinicians who have been found by OIG to have committed information blocking would

be removed as an ACO participant and subject to disincentives under the MIPS program, we confirm that such clinicians could be removed as ACO participants and, if they are MIPS eligible clinicians, they could also be subject to the information blocking disincentive under MIPS. While we acknowledge the commenters' concerns that removing or denying an ACO participant from an ACO could result in downstream effects that have implications for eligibility of Advanced APM incentive payments and scoring under MIPS, we reiterate that the approach is to deter information blocking by health care providers participating in the Shared Savings Program through the imposition of appropriate disincentives consistent with the requirements of the Cures Act.

It is important to clarify that there is no network adequacy requirement in the Shared Savings Program. Unlike other healthcare programs, such as managed care plans, the Shared Savings Program does not limit beneficiaries to receiving care from only the providers and suppliers that participate in the ACO. Thus, there is no need in the Shared Savings Program to impose network adequacy requirements on participating ACOs. Concerns about the effect of the disincentive as it relates to network adequacy are thus unwarranted.

Comments. Many commenters did not support the proposed disincentive on the basis that it would be unfair and inappropriate to penalize the entire ACO for the actions of one individual ACO participant or ACO provider/supplier determined by OIG to have committed information blocking. Some commenters stated that if one ACO participant or ACO provider/supplier is determined to have committed information blocking, then the entire ACO entity would be prohibited from participating in the Shared Savings Program. Commenters expressed concern that excluding an entire ACO would harm patients who rely on those ACOs for their healthcare. The commenters explained that by denying participation to all health care providers in an ACO due to the actions of a few, patients' access and continuity of care would ultimately suffer. One commenter stated that ACO participants who did not engage in information blocking themselves would likely be unaware of and unable to control the actions of other participants who did commit information blocking and that it would be unfair to penalize the broader group for the actions of a few individuals. Another commenter expressed concern about an ACO being banned from the Shared Savings

Program if a single health care provider within the ACO is found by OIG to have committed information blocking, especially if the information blocking activity is inconsistent with documented ACO policies and practices.

Response. The concerns expressed by the commenters indicate that there might be a misunderstanding about the proposed disincentive. Our intention is not to penalize the entire ACO entity for the actions of a single ACO participant or ACO provider/supplier that is the subject of an OIG information blocking determination. Instead, the proposal would impose a disincentive on the specific health care provider that committed information blocking, as determined by OIG. In the Disincentives Proposed Rule (88 FR 74965), we explained that CMS would notify ACOs about an ACO participant or ACO provider/supplier that had committed information blocking, as determined by OIG, so that the ACO could take remedial action—removing the ACO participant from the ACO participant list or the ACO provider/supplier from the ACO provider/supplier list—as required by the ACO participant agreement (88 FR 74965). ACOs are expected to take remedial action against ACO participants and ACO providers/suppliers that have been found by OIG to have committed information blocking through their ACO participant agreements, which must permit the ACO to take remedial action against the ACO participant, and require the ACO participant to take remedial action against its ACO providers/suppliers, including imposition of a corrective action plan, denial of incentive payments, and termination of the ACO participant agreement, to address noncompliance with the requirements of the Shared Savings Program and other program integrity issues. Should the ACO fail to take the appropriate remedial action against the ACO participant or ACO provider/supplier, CMS may take action against the ACO consistent with its authority at 42 CFR 425.216 and 425.218.

While it is true that consequences may extend to ACO participants or ACO providers/suppliers if the ACO itself is found by OIG to have committed information blocking, our focus is on imposing disincentives for information blocking on the specific health care provider that has committed information blocking, not on imposing disincentives on entire groups of health care providers or ACO participants that had no involvement in the activity that resulted in an information blocking determination by OIG. We also

understand the concerns raised about fairness and patient access, and we agree with commenters that there could be a negative impact to an ACO if an ACO participant with a large number of assigned beneficiaries is found by OIG to have committed information blocking, requiring removal of the ACO participant from the ACO participant list as a result of the proposed disincentive. However, it is important that ACOs make their own assessment of potential ACO participants—and the potential ACO participant's commitment to information sharing for the purposes of care coordination, quality measurement, and quality reporting activities—prior to contracting with them. We reiterate that the goal of the proposal is to ensure that appropriate disincentives are imposed on health care providers that have committed information blocking, as determined by OIG, while minimizing unintended consequences for ACOs and Medicare beneficiaries. We have finalized the proposal with modifications so that we will consider an OIG information blocking determination in light of the relevant facts and circumstances before applying a disincentive.

Comments. Several commenters expressed concerns with CMS' proposal to remove ACO participants and ACO providers/suppliers at the TIN level rather than at the individual or NPI level. Commenters stated that implementing disincentives at the TIN level would negatively affect not only health care providers who engaged in information blocking, but also those who did not. One commenter expressed concern that this approach could undermine existing contractual agreements between CMS and ACOs while another commenter stated that applying the disincentive at the TIN-level would negatively impact patient attribution calculations and the beneficiaries receiving services from that TIN. A few commenters requested that CMS clarify how the proposed disincentive and the removal of ACO providers/suppliers would impact patient attribution and who would subsequently assume responsibility for those patients' care. Other commenters requested clarification on how ACO suspension would impact health care providers and suppliers in relation to Shared Savings Program rules allowing gradual progression from one-sided to two-sided risk arrangements over certain time periods.

Response. While we appreciate the concerns raised by commenters regarding the application of disincentives at the ACO participant

TIN level, it is important to clarify that the approach is designed to hold accountable the health care provider OIG determined to be responsible for information blocking, whether that is at the ACO participant TIN or NPI level. While we understand that not every individual within an ACO participant TIN may be directly involved in information blocking activities, holding the ACO participant TIN accountable (if the ACO participant TIN is the entity found by OIG to have committed information blocking) is required under PHSA section 3022(b)(2)(B), which specifies that health care providers (individuals or entities) that have been determined by OIG to have committed information blocking shall be subject to appropriate disincentives. Please refer to the discussion of the definition of health care provider at 45 CFR 171.102 in section II.B.1. of this rule. Should OIG determine that information blocking has occurred at the NPI level (in other words, that an ACO provider/supplier has committed information blocking), we would notify the ACO so that it could take remedial action—removing the ACO provider/supplier from the ACO's provider/supplier list—as required by the ACO participant agreement. We would not impose a disincentive at the ACO participant TIN level or the ACO level if only an ACO provider/supplier was determined by OIG to have committed information blocking.

With respect to how the removal of an ACO participant or ACO providers/suppliers could affect an ACO's assigned beneficiary population, it is important to note that CMS assigns beneficiaries to an ACO as a whole; beneficiaries are not assigned to a particular ACO participant TIN or ACO provider/supplier. We acknowledge that removal or denial of an ACO participant or ACO provider/supplier as a result of an OIG information blocking determination could impact the number of beneficiaries assigned to an ACO, and we expect the risk of this occurring is a valuable deterrent against information blocking that may lead to the implementation of ACO operating procedures that proactively prevent information blocking. As discussed above, however, this would not affect beneficiary access to care. Medicare beneficiaries may continue to see the health care provider of his or her choice, regardless of whether the provider is a participant or provider/supplier in an ACO, or the beneficiary is assigned to a particular ACO.

The termination of an ACO from the Shared Savings Program for at least one performance year as a result of an

information blocking determination would interrupt the ACO's progression along the BASIC track's glide path from a one-sided to two-sided risk arrangement, and the ACO would need to meet eligibility determinations regarding what level of participation they would be eligible for when reentering their participation in the Shared Savings Program. We do not foresee, however, similar challenges to progress to two-sided risk for ACO participants or ACO providers/suppliers that are prevented from joining or that are removed from an ACO as a result of an information blocking determination.

After the completion of the last performance year in which the disincentive was applied, an ACO may submit a change request to add the TIN or include the NPI on its ACO participant list or ACO provider/supplier list, as applicable, for a subsequent performance year, and CMS would approve the addition, assuming that all other Shared Savings Program requirements for adding a TIN or NPI are met, so long as (1) OIG has not made any additional determinations of information blocking, and (2) the ACO provides assurances (in the form and manner required by CMS) that the information blocking is no longer ongoing and that the ACO has put safeguards in place to prevent the information blocking that was the subject of the referral.

Comments. One commenter expressed concern about the impacts of the proposed disincentive on skilled nursing facilities (SNFs) specifically. The commenter explained that because SNFs have been excluded from Federal health IT incentive programs, SNFs may not have the requisite technology to be able to share information as required under the information blocking regulations. As a result, the commenter recommended that OIG and CMS consider each ACO health care provider's unique situation and not apply a one-size-fits-all standard approach to all providers participating in an ACO. The commenter further recommended that CMS provide certain health care providers with exemptions from the proposed disincentive for the Shared Savings Program. Specifically, the commenter requested that CMS exclude SNFs from the proposed disincentive if the SNF is the only health care provider in a rural or underserved location and all other ACO participation requirements are met. The commenter stated that this exception would ensure that Medicare beneficiaries are not denied access to nearby SNFs and post-acute care. The commenter also requested that CMS

exclude SNFs or any ACO providers/suppliers if their ACO participant agreements are structured so that they do not receive the ACO's shared savings from the proposed disincentive. The commenter noted that ACOs are not required to share incentive payments and earned shared savings with ACO health care providers in their network, such as SNFs. Therefore, applying the disincentive without this exemption would further deter SNF participation in ACOs.

Response. We appreciate the commenter's concerns regarding the potential impact of the proposed disincentive on SNFs participating in the Shared Savings Program. We recognize that these facilities were not eligible for participation in the Medicare and Medicaid EHR Incentive Programs. However, it is important to clarify that SNFs are explicitly included in the definition of health care provider defined in 45 CFR 171.102 (which codifies the definition of health care provider in section 3000(3) of the PHSA) for which the Cures Act instructs the Secretary to establish appropriate disincentives for information blocking. While it is true that the initial implementation of appropriate disincentives in this rule, through the Shared Savings Program, MIPS, and the Medicare Promoting Interoperability Program, may not reach all types of health care providers defined at 45 CFR 171.102, to exempt a single type of health care provider participating in one of these programs from the disincentive would be particularly inequitable and thwart the purpose of the rule. For these reasons, we are unwilling and unable to grant any exemptions for SNFs that are ACO participants or SNF affiliates from the proposed disincentive, as requested by the commenter. We nonetheless recognize the vital role SNFs play in providing post-acute care, particularly in rural or underserved areas, and we recognize that it is important to clarify that Medicare beneficiaries may continue to utilize the SNF of his or her choice, regardless of whether the SNF, or the health care providers rendering services at the SNF, is an ACO participant or ACO provider/supplier in an ACO.

More broadly, we agree with the commenter that it is important to consider the unique circumstances of health care providers when implementing the proposed disincentive under the Shared Savings Program, and we agree that a one-size-fits-all approach may not be suitable for all health care providers, especially those facing technological limitations. For this reason, finalizing the proposal with modifications to incorporate the

alternative policy will allow us to consider the unique circumstances of the health care provider when applying this disincentive, and we will consider an OIG information blocking determination in light of the relevant facts and circumstances before applying a disincentive, such as denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), denying an ACO's application to participate in the Shared Savings Program if the remedial action is not taken, or terminating an ACO's participation agreement with CMS.

Comments. Several commenters stated that the proposed disincentive is excessive, redundant, and constitutes a double penalty because health care providers found by OIG to have committed information blocking will be subject to disincentives under MIPS and may also be subject to removal from the Shared Savings Program for at least 1 year. One commenter expressed concern that cumulative disincentives could be more pronounced for hospitals based on removal from the Shared Savings Program in the violation year and receiving a market basket decrease the following year under MIPS.

Response. We understand commenters' concerns about the potential for cumulative disincentives for health care providers found by OIG to have committed information blocking. We have finalized the proposed policy with modifications to incorporate the alternative policy we outlined in the Disincentives Proposed Rule (88 FR 74966), under which we will consider OIG's referral of an information blocking determination in light of the relevant facts and circumstances, including the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, whether a health care provider was previously subject to a disincentive in another program, before denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), denying an ACO's application to participate in the Shared Savings Program, or terminating an ACO's participation agreement with CMS. This approach furthers the Shared Savings Program's goal of imposing appropriate

disincentives for information blocking consistent with the Cures Act, while ensuring relevant facts and circumstances are used to inform decisions made under the Shared Savings Program.

Comments. A few commenters recommended that CMS adopt specific revisions to the proposal. One commenter expressed concern that requiring ACOs to remove ACO participants or ACO health care providers could impose undue administrative burdens on ACOs. The commenter recommended that CMS assume the responsibility of removing entities that have committed information blocking from the ACO and notify the affected ACO when it has taken such actions. One commenter suggested that, prior to imposing any disincentives on ACOs, we provide accommodations for hardship, have a well-defined investigative process, and establish a graduated disincentive structure that accounts for the impact ACOs have on the communities they serve. Another commenter recommended that CMS establish more than one disincentive option for ACOs, ACO participants, and ACO providers/suppliers to provide flexibility in determining the disincentive appropriate for each case.

Response. While we understand that removing ACO participants or ACO providers/suppliers that have committed information blocking, as determined by OIG, could result in additional work for the ACO, CMS expects ACOs to be equipped to take remedial action against their ACO participants under their agreements with the ACO participants. We also expect ACO participants, in turn, to take remedial action against its ACO providers/suppliers, including imposition of a corrective action plan, denial of incentive payments, and termination of the ACO participant agreement, to address noncompliance with the requirements of the Shared Savings Program and other program integrity issues, including program integrity issues identified by CMS (42 CFR 425.116(a)(7)). For these reasons, the remedial action CMS expects ACOs and ACO participants to take in the case of an OIG determination of information blocking is consistent with their existing obligations under the Shared Savings Program and should not represent an undue burden.

Regarding the suggestion that CMS provide hardship accommodations prior to imposing any disincentives on ACOs and that CMS have a well-defined investigative process and establish a graduated disincentive structure that

accounts for the impact ACOs have on the communities they serve, we have finalized the proposed policy with modifications to incorporate the alternative policy so that we will consider OIG's referral of an information blocking determination in light of the relevant facts and circumstances. This approach will require that we carefully consider the unique circumstances of an ACO prior to imposing any disincentive, and it obviates the need for a hardship accommodation or a graduated disincentive structure. While we appreciate the suggestion to establish multiple disincentive options for ACOs, ACO participants, and ACO providers/suppliers, we decline to do so. As mentioned above, the alternative policy we are adopting provides CMS with the discretion to consider the relevant facts and circumstances before applying a disincentive, such as denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), denying an ACO's application to participate in the Shared Savings Program if the remedial action is not taken, or terminating an ACO's participation agreement with CMS. This approach provides adequate flexibility in the application of appropriate disincentives under the Shared Savings program.

Comments. Several commenters opposed to the proposal urged us to consider alternative disincentives. Many commenters recommended that CMS allow ACOs, ACO participants, and ACO providers/suppliers to take remedial or corrective action rather than removal from the Shared Savings Program. Commenters explained that remedial actions could include a probation period, a reduction or withhold of shared savings or incentives, corrective action plans, or mandatory education for those who have engaged in information blocking. Commenters further explained that allowing ACOs, ACO participants, and ACO providers/suppliers to take corrective action would allow CMS to impose disincentives on health care providers determined by OIG to have committed information blocking while still allowing those providers to participate in the Shared Savings Program. Several commenters also recommended that CMS and ONC provide education and technical assistance to ACOs, ACO participants, and ACO providers/suppliers on the proposed disincentive and its potential

impacts. They also suggested that CMS consider a tiered or scaled approach that accounts for the circumstances and frequency of misconduct when determining the appropriate disincentive to apply. A few commenters recommended that CMS delay implementing disincentives specific to ACOs or the Shared Savings Program and instead introduce disincentives in a separate rule once the risks to patient outcomes are better understood. Another commenter recommended that CMS consult closely with ACOs to ensure that CMS understands the potential impacts of any proposed disincentives. One commenter suggested that instead of limiting ACO participation in the Shared Savings Program, CMS should expand safe harbor protections to facilitate EHR information sharing between hospitals, health systems, and ACOs. The commenter explained that this would more effectively promote interoperability compared to the proposed disincentive. Another commenter recommended that ACOs should only be excluded from the Shared Savings Program if the determination of information blocking is related to activity that is integral to the function or operations of the ACO. In addition, a few commenters recommended that CMS consider disincentives that reduce the Advanced Alternative Payment Model (APM) incentive payment or conversion factor for health care providers. For example, these commenters recommended that health care providers in an Advanced APM found by OIG to have committed information blocking receive only 75 percent of their eligible Advanced APM bonus payment. The commenters explained that this alternative would better align with the disincentive proposed for MIPS eligible clinicians and would not deny access to care for beneficiaries.

Response. We appreciate commenters' suggestions for alternative disincentives but, for the reasons previously noted and for the additional reasons discussed below, we have finalized the proposal with modifications to incorporate the alternative policy discussed in the Disincentives Proposed Rule. In accordance with PHSA section 3022(b)(2)(B), we are required to impose disincentives for health care providers that are found by OIG to have committed information blocking. While we understand the benefits of an approach that would impose remedial or corrective actions rather than denial of approval to participate in or removal from the Shared Savings Program, those

approaches may not have any deterrent effect, which is a fundamental aspect of any disincentive. In addition, the relevance of remedial and corrective actions may be limited in light of the time that may elapse between the underlying information blocking conduct and OIG's investigation. The disincentive we are adopting strikes a careful balance between deterring information blocking through meaningful consequences and ensuring that health care providers who have committed information blocking and corrected their actions are not permanently barred from participating in the Shared Savings Program.

We appreciate the recommendation to delay implementation of the proposed disincentive until patient outcomes are better understood. We are concerned, however, that delaying implementation of the disincentive could adversely affect patient care, as information blocking could impede effective care coordination and quality improvement activities within ACOs. Moreover, the proposed disincentive will serve as a deterrent to information blocking by health care providers participating in the Shared Savings Program. For these reasons, we decline to delay the implementation of disincentives for information blocking. In addition, the information blocking regulations in the ONC Cures Act Final Rule were released on May 1, 2020, and it is not necessary to further delay the establishment of disincentives for health care providers that have been found by OIG to have committed information blocking. While expanding safe harbor protections for EHR information sharing may facilitate data sharing and interoperability, we did not propose any such safe harbor expansion in the Disincentives Proposed Rule; therefore, this suggestion is beyond the scope of the disincentive proposed by the Shared Savings Program. Regarding the suggestion to exclude ACOs from the Shared Savings Program only if the determination of information blocking is related to integral ACO activities, we recognize the importance of considering the context of information blocking incidents, which is why we have finalized the proposed policy with modifications to incorporate the alternative policy, under which we will consider whether to impose a disincentive under the Shared Savings Program in light of the relevant facts and circumstances. Our use of a consistent standard in the Shared Savings Program for all instances of information blocking will ensure fairness in the application of

disincentives for ACOs, ACO participants, and ACO providers/suppliers.

While we appreciate the recommendation to reduce Advanced APM incentive payments for health care providers found to have committed information blocking, we have not identified authority that would permit us to alter APM incentive payments issued pursuant to section 1833(z)(1) of the Social Security Act and 42 CFR 414.1450. Finalizing the proposed disincentive with modifications to incorporate the alternative policy is an effective way to impose disincentives for information blocking and to promote interoperability among ACOs, ACO participants, and ACO providers/suppliers.

Comments. A few commenters requested clarification on which disincentives will apply in specific situations such as: whether a disincentive would apply to an ACO if a hospitalist is found to be information blocking and the hospital participates in an ACO; if a hospitalist is found to be information blocking would the health care provider and the hospital receive disincentives; and, if a physician, who is a MIPS eligible clinician and a participant in a Shared Savings Program ACO, is an information blocker could the physician potentially be penalized under MIPS and also removed from the ACO for a year.

Response. As discussed above, the proposal imposes a disincentive on the specific health care provider that committed information blocking, as determined by OIG. Whether the hospitalist or the hospital has committed information blocking will be determined by OIG through its investigation. If a hospitalist is determined by OIG to have committed information blocking and CMS is applying the disincentive, CMS would notify the ACO so that the ACO and ACO participant could take remedial action—removing the hospitalist from either the ACO participant list or the ACO provider/supplier list, as applicable, pursuant to the ACO participant agreement.

We understand commenters' concerns about the potential for cumulative disincentives for health care providers found by OIG to have committed information blocking, such as a MIPS eligible clinician participating in an ACO. As discussed above, we have finalized the proposed policy with modifications to incorporate the alternative policy we outlined in the Disincentives Proposed Rule, under which we will consider OIG's referral of an information blocking determination

in light of the relevant facts and circumstances, including the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, whether a health care provider was previously subject to a disincentive in another program, before applying a disincentive, such as denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), denying an ACO's application to participate in the Shared Savings Program, or terminating an ACO's participation agreement with CMS (88 FR 74966). This approach furthers the Shared Savings Program's goal of imposing disincentives for information blocking consistent with the Cures Act, while ensuring relevant facts and circumstances are used to inform decisions made under the Shared Savings Program.

Comments. One commenter expressed concern with the timing of the disincentive. The commenter explained that because OIG investigations of information blocking can take years to complete, ACO participants that have committed information blocking may no longer be participating in the ACO or the Shared Savings Program by the time CMS receives the referral. The commenter recommended that CMS clarify that if OIG refers to CMS a finding that a former ACO participant committed information blocking, the disincentive should not apply to the ACO or its remaining ACO participants.

Response. We appreciate the commenter's concern and request for additional information about the timing of a disincentive for information blocking. We want to clarify that if a former ACO participant is determined by OIG to have committed information blocking, we would not impose a disincentive on the ACO or the remaining ACO participants. As we explained in the Disincentives Proposed Rule, applying the disincentive prospectively is the most appropriate timing for the disincentive, as it would be impractical and inequitable for CMS to apply the disincentive retrospectively or in the same year in which CMS received a referral from OIG (88 FR 74965). Prospective application of the disincentive will also enable ACOs to remove any ACO participant TINs or ACO providers/suppliers during the annual application and change request cycle that have committed information blocking, as determined by OIG.

Applying the disincentive to a historical performance year or a performance year contemporaneous to OIG's determination would unfairly affect other ACO participants that did not commit the information blocking and likely were not aware of the information blocking (88 FR 74965).

Comments. A few commenters expressed concern that ACO participants would only be able to appeal the application of the disincentive but not the actual information blocking determination. One commenter expressed concern that an appeal process may not be available under existing rules for Shared Savings Program ACO participants. Another commenter noted that a finding of information blocking could have future program integrity implications. A few commenters specifically requested that HHS clarify the rights of both ACOs and clinicians within an ACO to appeal an information blocking finding and provide extenuating information, such as why they contend an exception applied.

Response. As discussed in the Disincentives Proposed Rule (88 FR 74966), an ACO may appeal an initial determination that is not prohibited from administrative or judicial review under 42 CFR 425.800 by requesting a reconsideration review by a CMS reconsideration official (42 CFR 425.802(a)). Individual ACO participants do not have the right to request an appeal under the Shared Savings Program regulations. To the extent it is not barred by 42 CFR 425.800, an ACO may appeal (on behalf of an ACO participant) the removal or denial of a health care provider from an ACO participant list as a result of the referral by OIG of an ACO participant that OIG had determined to be an information blocker. Subject to the same limitation, an ACO applicant or ACO may appeal the denial of the ACO applicant's application or termination of the ACO's participation agreement as a result of the referral by OIG of the ACO applicant or ACO that the OIG had determined to be an information blocker. The underlying information blocking determination made by OIG, however, is not subject to the Shared Savings Program's reconsideration process. The OIG determination is not an initial determination made by CMS, but a determination made by another agency and the Shared Savings Program reconsideration process may not negate, diminish, or otherwise alter the applicability of determinations made by other government agencies (see 42 CFR 425.808(b)). In the Disincentives Proposed Rule, we noted that we

considered OIG to be a separate and distinct agency from CMS for the purposes of this provision (88 FR 74966). The Shared Savings Program's reconsideration process would thus not be the appropriate forum to seek reconsideration of OIG's determination.

After consideration of the public comments, CMS has finalized the alternative policy that will consider an OIG information blocking determination in light of the relevant facts and circumstances before applying a disincentive, such as denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), denying an ACO's application to participate in the Shared Savings Program if the remedial action is not taken, or terminating an ACO's participation agreement with CMS. The relevant facts and circumstances include the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, whether the provider was previously subject to a disincentive in another program, and other factors.

CMS notes that the final policies in this rule will become effective 30 days after the official publication date. However, we note that section III.B.1. of this final rule states that OIG will not begin investigating health care providers until after the effective date of this rule, and that OIG will exercise its enforcement discretion not to make any determinations regarding conduct occurring prior to the effective date of this rule for information blocking disincentives. As OIG will not make a determination on conduct occurring prior to the effective date, OIG will not refer any health care providers based on a determination of conduct occurring prior to the effective date of this rule for information blocking disincentives. This means that CMS will not impose the disincentive in the Shared Savings Program for information blocking committed prior to the effective date of this final rule. We further clarify that any disincentives under the Shared Savings Program for information blocking determinations referred by OIG would be imposed after January 1, 2025.

IV. Request for Information

As discussed in section III.C.1. of the Disincentives Proposed Rule, we recognize that the disincentives we proposed would only apply to a subset of health care providers as defined in 45

CFR 171.102 (88 FR 74954 and 74955). However, we believe it is important for HHS to establish appropriate disincentives that would apply to all health care providers, as such providers are defined in 45 CFR 171.102. This would ensure that any health care provider, as defined in 45 CFR 171.102, that has engaged in information blocking would be subject to appropriate disincentives by an appropriate agency, consistent with the disincentives provision at PHSA section 3022(b)(2)(B).

We requested information from the public on additional appropriate disincentives that we should consider in future rulemaking, particularly disincentives that would apply to health care providers, as defined in 45 CFR 171.102, that are not implicated by the disincentives proposed in the Disincentives Proposed Rule (88 FR 74966 and 74967). We encouraged commenters to identify specific health care providers (for example, laboratories, pharmacies, post-acute care providers, etc.) and associated potential disincentives using authorities under applicable Federal law. We also requested information about the health care providers that HHS should prioritize when establishing additional disincentives.

We received 32 submissions on this RFI. We thank commenters for their comments. We have shared all the comments received with the appropriate agencies and offices for consideration in subsequent rulemaking to establish additional disincentives for specific health care providers.

V. Collection of Information Requirements

This document does not impose any new information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled “Modernizing Regulatory Review” (April 6, 2023), the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, September 19, 1980), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of

1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

A. Executive Order 12866

Executive Order 12866, as amended by Executive Order 14094 published on April 6, 2023, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with significant effects (for example, \$200 million or more in any given year). This is not a major rule as defined at 5 U.S.C. 804(2); it is not significant under section 3(f)(1) of Executive Order 12866 because it does not reach that economic threshold, nor does it meet the other criteria outlined in the Executive order.

This final rule would implement provisions of the Cures Act through changes to 45 CFR part 171 and 42 CFR parts 414, 425, and 495. For the reasons set forth below, we believe that the likely aggregate economic effect of these regulations would be significantly less than \$200 million.

The expected benefits of this final rule would be to deter information blocking that interferes with effective health information exchange and negatively impacts many important aspects of healthcare. We refer readers to the impact analysis of the benefits of deterring information blocking in the ONC Cures Act Final Rule, which encompasses all anticipated benefits without differentiation among actors (85 FR 25936).

We anticipate that OIG would incur some costs associated with investigation as authorized by the Cures Act. The Consolidated Appropriations Act, 2022, provides OIG the authority to use its existing funding to conduct information blocking activities (Pub. L. 117–103, March 15, 2022). OIG has not received additional appropriations or increased funding levels specific to information blocking.

Additionally, investigated parties may incur some costs in response to an OIG investigation or in response to the application of a disincentive by an agency with the authority to impose a disincentive. Absent information about the frequency of prohibited practices, including the number of OIG determinations of information blocking in a given year that could be referred to an appropriate agency, we are unable to

determine the potential costs of this regulation.

The monetary value of the disincentives finalized in this rule, if imposed on a health care provider by an appropriate agency, would be considered transfers. We are unable to reliably estimate the aggregate value of potential disincentive amounts because the value of the disincentive may vary based on other provisions specific to the authority under which the disincentive has been established, as discussed in section III.C.1. of this final rule. For instance, the value of a disincentive imposed on an eligible hospital under the disincentive finalized in section III.C.2. of this final rule would depend on the amount of IPPS payment received by the eligible hospital.

We invited public comment on potential impacts of the rulemaking. The following is a summary of the comments we received and our responses.

Comments. A few commenters expressed disagreement with ONC’s assertion that the proposed rule will have economically insignificant effects. These commenters expressed that the Disincentives Proposed Rule underestimated the potential financial impact to entities operating under the authorities in section III.C. of the proposed rule. One commenter stated that health care providers with a larger share of Medicare patients could face financial costs approximately ten times greater than the estimated median impact. Additionally, this commenter expressed that the potential loss of savings to the Medicare Trust Fund as a result of barring participation in the Shared Savings Program would likely result in the rule having an annual economic effect exceeding \$200 million, citing the significant amount of aggregate savings to the Medicare Trust Fund and average savings per ACO. One commenter recommended delaying the rule until HHS conducts an assessment of the rule’s impact on clinicians and patient access, expressing concern that the proposed financial disincentives might negatively impact access to care.

Response. We acknowledge commenters’ concerns about the impact that applying disincentives may have on individual health care providers. In the Disincentives Proposed Rule, we provided illustrative estimates of the monetary value of the proposed disincentive for eligible hospitals under the Medicare Promoting Interoperability Program (88 FR 74956 and 74957) and for eligible clinicians under the MIPS Promoting Interoperability performance category (88 FR 74960). While we presented median values, as well as 95

percent ranges of estimates, in both cases, we acknowledge that there may be outlier examples that result in monetary values that are significantly higher than the figures presented in the analysis. However, we disagree that these figures, or other information commenters may provide about potential impacts on individual health care providers, directly impact our analysis of whether this is a significant regulatory action. As noted above, we are unable to reliably estimate either the frequency of prohibited practices, including the number of OIG determinations of information blocking in a given year that could be referred to an appropriate agency as a subset of all prohibited practices that could be determined to be information blocking, or the aggregate value of potential disincentive amounts, because the value of the disincentive may vary based on other provisions specific to the authority under which the disincentive has been established. Regarding the potential loss of savings to the Medicare Trust Fund associated with the disincentive finalized under the Shared Savings Program, we disagree that this would indicate that the rule would have an annual economic effect exceeding \$200 million. The figures cited by the commenter of aggregate savings of the Shared Savings Program and average savings per ACO do not provide information about the amount of savings that would be lost due to the imposition of disincentives under the Shared Savings Program, as disincentives would only be imposed on an ACO that is a health care provider, an ACO participant, or an ACO provider/supplier that has been determined by OIG to have committed information blocking, referred to CMS as the appropriate agency to be subject to disincentives. As CMS has finalized in section III.C.4., CMS will also determine whether to impose a disincentive under the Shared Savings Program based on relevant facts and circumstances. As stated above, we are unable to reliably estimate the frequency of prohibited practices or the aggregate value of potential disincentive amounts, and commenters provided no additional information or data for their assertion that the costs will be higher.

B. Regulatory Flexibility Act

The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit

organizations, and Government agencies.

The Department considers a rule to have a significant impact on a substantial number of small entities if it has an impact of more than 3 percent of revenue for more than 5 percent of affected small entities. This final rule would not have a significant impact on the operations of a substantial number of small entities, as these changes would not impose any new requirement on any party. We have concluded that this final rule likely would not have a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required for this rulemaking. Additionally, the Secretary certifies that this final rule would not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) the SSA (42 U.S.C. 1302) requires us to prepare a regulatory impact analysis if a rule under Titles XVIII or XIX or section B of Title XI of the SSA may have a significant impact the operations of a substantial number of small rural hospitals. We have concluded that this final rule would not have a significant impact on the operations of a substantial number of small rural hospitals because these changes would not impose any requirement on any party. Therefore, a regulatory impact analysis under section 1102(b) of the SSA is not required for this rulemaking. Therefore, the Secretary has certified that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million, adjusted annually for inflation. There are no significant costs associated with these finalized proposals that would impose mandates on State, local, or Tribal governments or the private sector resulting in an expenditure of \$183 million in 2024 (after adjustment for inflation) or more in any given year. A full analysis under the Unfunded Mandates Reform Act is not necessary.

D. Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local

governments, preempts State law, or otherwise has federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this final rule would not significantly affect the rights, roles, and responsibilities of State or local governments. Nothing in this final rule imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has federalism implications. We are not aware of any State laws or regulations that are contradicted or impeded by any of the provisions in this final rule.

List of Subjects

42 CFR Part 414

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 425

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 495

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Health records, Medicaid, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

45 CFR Part 171

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Healthcare, Health care provider, Health information exchange, Health information technology, Health information network, Health insurance, Health records, Hospitals, Privacy, Reporting and recordkeeping requirements, Public health, Security.

For the reasons set forth in the preamble, HHS amends 42 CFR chapter IV and 45 CFR part 171 as follows:

42 CFR Chapter IV

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

- 1. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(1).

- 2. Amend § 414.1305 by revising the definition of “Meaningful EHR user for MIPS” to read as follows:

§ 414.1305 Definitions.

* * * * *

Meaningful EHR user for MIPS means a MIPS eligible clinician that possesses CEHRT, uses the functionality of CEHRT, reports on applicable objectives and measures specified for the Promoting Interoperability performance category for a performance period in the form and manner specified by CMS, does not knowingly and willfully take action (such as to disable functionality) to limit or restrict the compatibility or interoperability of CEHRT, and engages in activities related to supporting providers with the performance of CEHRT. In addition, a MIPS eligible clinician (other than a qualified audiologist) is not a meaningful EHR user for a performance period if the HHS Inspector General refers a determination that the MIPS eligible clinician committed information blocking as defined at 45 CFR 171.103 during the calendar year of the performance period. The term “information blocking,” with respect to an individual MIPS eligible clinician or group, shall not include an act or practice other than an act or practice committed by such individual MIPS eligible clinician or group.

* * * * *

■ 3. Amend § 414.1375 by revising paragraph (b) introductory text to read as follows:

§ 414.1375 Promoting Interoperability (PI) performance category.

* * * * *

(b) *Reporting for the Promoting Interoperability performance category.* To earn a performance category score for the Promoting Interoperability performance category for inclusion in the final score, a MIPS eligible clinician must be a meaningful EHR user for MIPS and:

* * * * *

PART 425—MEDICARE SHARED SAVINGS PROGRAM

■ 4. The authority citation for part 425 continues to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395hh, and 1395jjj.

■ 5. Amend § 425.208 by adding paragraph (b)(6) to read as follows:

§ 425.208 Provisions of participation agreement.

* * * * *

(b) * * *

(6) The information blocking provision of the 21st Century Cures Act (42 U.S.C. 300jj–52).

* * * * *

■ 6. Amend § 425.218 by revising paragraph (b)(3) to read as follows:

§ 425.218 Termination of the participation agreement by CMS.

* * * * *

(b) * * *

(3) Violations of any applicable laws, rules, or regulations that are relevant to ACO operations, including, but not limited to, the laws specified at § 425.208(b).

* * * * *

■ 7. Amend § 425.305 by revising paragraph (a)(1) to read as follows:

§ 425.305 Other program safeguards.

(a) * * *

(1) ACOs, ACO participants, and ACO providers/suppliers are reviewed during the Shared Savings Program application process and periodically thereafter with regard to their program integrity history, including any history of Medicare program exclusions or other sanctions and affiliations with individuals or entities that have a history of program integrity issues. Program integrity history issues include, but are not limited to, a history of Medicare program exclusions or other sanctions, noncompliance with the requirements of the Shared Savings Program, or violations of laws specified at § 425.208(b).

* * * * *

PART 495—STANDARDS FOR THE ELECTRONIC HEALTH RECORD TECHNOLOGY INCENTIVE PROGRAM

■ 8. The authority citation for part 495 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 9. Amend § 495.4 in the definition of “Meaningful EHR user” by revising paragraph (1) introductory text and adding paragraph (4) to read as follows:

§ 495.4 Definitions.

* * * * *

Meaningful EHR user * * *

(1) Subject to paragraphs (3) and (4) of this definition, an eligible professional, eligible hospital or CAH that, for an EHR reporting period for a payment year or payment adjustment year—

* * * * *

(4) An eligible professional, eligible hospital or CAH is not a meaningful EHR user in a payment adjustment year if the HHS Inspector General refers a determination that the eligible hospital or CAH committed information blocking as defined at 45 CFR 171.103 during the calendar year of the EHR reporting period.

* * * * *

45 CFR Subtitle A**PART 171—INFORMATION BLOCKING**

■ 10. The authority citation for part 171 continues to read as follows:

Authority: 42 U.S.C. 300jj–52; 5 U.S.C. 552.

■ 11. Amend § 171.102 by adding, in alphabetical order, the definition of “Appropriate agency” and “Disincentive” to read as follows:

§ 171.102 Definitions.

* * * * *

Appropriate agency means a government agency that has established disincentives for health care providers that the Office of Inspector General (OIG) determines have committed information blocking.

* * * * *

Disincentive means a condition specified in § 171.1001(a) that is imposed by an appropriate agency on a health care provider that the OIG determines has committed information blocking for the purpose of deterring information blocking practices.

* * * * *

Subparts E Through I [Added and Reserved]

■ 12. Add and reserve subparts E through I.

■ 13. Add subpart J to read as follows:

Subpart J—Disincentives for Information Blocking by Health Care Providers

Sec.

171.1000 Scope.

171.1001 Disincentives.

171.1002 Notice of disincentive.

§ 171.1000 Scope.

This subpart sets forth disincentives that an appropriate agency may impose on a health care provider that the OIG determines has committed information blocking, and certain procedures related to those disincentives.

§ 171.1001 Disincentives.

(a) Centers for Medicare & Medicaid Services may apply the following disincentives:

(1) An eligible hospital or critical access hospital (CAH) as defined in 42 CFR 495.4 is not a meaningful electronic health record (EHR) user as also defined in 42 CFR 495.4.

(2) A Merit-based Incentive Payment System (MIPS) eligible clinician as defined in 42 CFR 414.1305, who is also a health care provider as defined in § 171.102, is not a meaningful EHR user for MIPS as defined in 42 CFR 414.1305.

(3) Accountable care organizations (ACOs) who are health care providers as defined in § 171.102, ACO participants, and ACO providers/suppliers will be removed from, or denied approval to participate, in the Medicare Shared Savings Program as defined in 42 CFR part 425 for at least 1 year.

(b) [Reserved]

§ 171.1002 Notice of disincentive.

Following referral of a determination of information blocking by OIG, an appropriate agency that imposes a disincentive or disincentives specified in § 171.1001 shall send a notice to the health care provider subject to the disincentive or disincentives, via usual methods of communication for the program or payment system under which the disincentive is applied, that includes:

(a) A description of the practice or practices that formed the basis for the determination of information blocking referred by OIG;

(b) The basis for the application of the disincentive or disincentives being imposed;

(c) The effect of each disincentive; and

(d) Any other information necessary for a health care provider to understand how each disincentive will be implemented.

■ 14. Add subpart K to read as follows:

Subpart K—Transparency for Information Blocking Determinations, Disincentives, and Penalties

Sec.

171.1100 Scope.

171.1101 Posting of information for actors found to have committed information blocking.

Authority: 42 U.S.C. 300jj–11(c)(4).

§ 171.1100 Scope.

This subpart sets forth the information that will be posted on the Office of the National Coordinator for Health Information Technology's (ONC) public website about actors that have been determined by the HHS Office of Inspector General to have committed information blocking.

§ 171.1101 Posting of information for actors found to have committed information blocking.

(a) *Health care providers.* (1) ONC will post on its public website the following information about health care providers that have been subject to a disincentive in § 171.1001(a) for information blocking:

(i) Health care provider name;

(ii) Business address;

(iii) The practice, as the term is defined in § 171.102 and referenced in § 171.103, found to have been information blocking, including when the practice occurred;

(iv) Disincentive(s) applied; and

(v) Where to find any additional information about the determination of information blocking that is publicly available via HHS or, where applicable, another part of the U.S. Government.

(2) The information specified in paragraph (a)(1) of this section will not be posted prior to a disincentive being imposed or the completion of any administrative appeals process pursued by the health care provider, and will not include information about a disincentive that has not been applied.

(3) Posting of the information specified in paragraph (a)(1) of this section will be conducted in accordance with existing rights to review information that may be associated with a disincentive specified in § 171.1001.

(b) *Health IT developers of certified health IT and health information*

networks or health information exchanges. (1) ONC will post on its public website the following information, to the extent applicable, about health information networks/health information exchanges and health IT developers of certified health IT (actors) that have been determined by the HHS Office of Inspector General to have committed information blocking:

(i) Type of actor;

(ii) Actor's legal name, including any alternative or additional trade name(s) under which the actor operates;

(iii) The practice, as the term is defined in § 171.102 and referenced in § 171.103, found to have been information blocking or alleged to be information blocking in the situation specified in paragraph (b)(2)(i) of this section, and including when the practice occurred; and

(iv) Where to find any additional information about the determination (or resolution of information blocking as specified in paragraph (b)(2)(i) of this section) of information blocking that is publicly available via HHS or, where applicable, another part of the U.S. Government.

(2) The information specified in paragraph (b)(1) of this section will not be posted until one of the following occurs:

(i) OIG enters into a resolution of civil money penalty (CMP) liability; or

(ii) A CMP imposed under subpart N of 42 CFR part 1003 has become final consistent with the procedures in subpart O of 42 CFR part 1003.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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A new table will be published in the first issue of each month.

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